



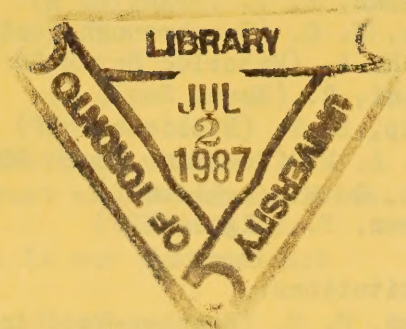
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Government
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STANDING COMMITTEE ON PUBLIC ACCOUNTS

IDEA CORP.
RENTAL HOUSING LOAN

THURSDAY, NOVEMBER 20, 1986



STANDING COMMITTEE ON PUBLIC ACCOUNTS

CHAIRMAN: Runciman, R. W. (Leeds PC)

VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)

Barlow, W. W. (Cambridge PC)

Callahan, R. V. (Brampton L)

Davis, W. C. (Scarborough Centre PC)

Epp, H. A. (Waterloo North L)

Mancini, R. (Essex South L)

Philip, E. T. (Etobicoke NDP)

Pope, A. W. (Cochrane South PC)

Smith, D. W. (Lambton L)

Wildman, B. (Algoma NDP)

Substitutions:

Bryden, M. H. (Beaches-Woodbine NDP) for Mr. Wildman

Reycraft, D. R. (Middlesex L) for Mr. Epp

Stevenson, K. R. (Durham-York PC) for Mr. Runciman

Clerk: Arnott, D.

Staff:

Fritz, H., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PUBLIC ACCOUNT

Thursday, November 20, 1986

The committee met at 10:19 a.m. in room 151.

The Acting Chairman (Mr. Barlow): I call this meeting to order. We have a four-item agenda, the first item being the report of the subcommittee.

Mr. Mancini: On a point of order, Mr. Chairman: Is our chairman not going to be here today?

The Acting Chairman: Mr. Runciman is away today.

Mr. Mancini: We were waiting for his decision on a motion. He was going to give us a judgement.

The Acting Chairman: That was on a notice of motion by Mr. Gillies. It is the third item on the agenda.

Mr. Mancini: I understand you will be reading his decision then.

The Acting Chairman: I will, if it is required.

Mr. Gillies: Actually, Mr. Chairman, we could do it now if you want.

The Acting Chairman: I have a copy of his decision.

Mr. Mancini: The point is, if he is not here, we will not have an opportunity to enter into a discussion of why he made the decision one way or another.

Mr. Gillies: If I may offer some guidance that may make this discussion unnecessary--

Mr. Mancini: You are not going to speak to the chairman, are you?

Mr. Gillies: No.

The Acting Chairman: Is it on the point, Mr. Gillies?

Mr. Philip: Why do we not deal with the items in the order of the agenda?

Mr. Gillies: That is fine. I just wanted to indicate that it will probably not be necessary to read the judgement because I am going to withdraw that motion and submit another one to the committee that takes care of the problem.

Mr. Mancini: I would like to hear the judgement just the same.

The Acting Chairman: We will deal with that at the appropriate time. Mr. Philip, did you have something you wanted to say?

Mr. Philip: On a point of privilege, Mr. Chairman: I feel my

privileges as a member of this committee are being abused by the acting Chairman of the Management Board (Mr. Nixon) and, more particularly, by Dr. Podrebarac, the Deputy Minister, human resources secretariat, Management Board of Cabinet. I have requested through a legislative library researcher, Barbara Cotton, a certain number of orders in council pertaining to the arrangements for crown employees who have left the employ of the government since the Liberal government took power.

The material has been refused to this researcher on the ground that there are confidentiality clauses in the agreements. We are dealing with public finance; we are dealing with public expenses. I find it obscene that a government which has done so little in terms of pensions for ordinary people should have private, secret agreements with high-level public employees when it wishes to send them on their way for whatever reason.

When Management Board was first approached, the researcher was asked to what use this was going to be put. They wanted a formal request in writing. That request was given to Dr. Podrebarac. In a telephone conversation some time later, Dr. Podrebarac explained that he had no knowledge of that. We then produced a receipt that showed it was delivered to his office several days before. He is now claiming that it is in the hands of the Attorney General (Mr. Scott), to look into the legal aspects of releasing this information.

I cannot imagine why the government would enter into secrecy provisions in each of these cases unless it was trying to hide from the public the kind of agreements and settlements it was making with these high-level employees.

Mr. Mancini: That is not a point of privilege.

Mr. Philip: I feel that my privileges as a member of this committee have been abused and I am asking that the Provincial Auditor contact the acting Chairman of Management Board and request that this information be released to him for distribution to members of this committee.

Mr. Reyecraft: On a point of order, Mr. Chairman: That is not a point of privilege.

Mr. Mancini: That is the point I am trying to make. It is not a point of privilege. We have 90-second statements in the House where people can use their time for that.

The Acting Chairman: I have been listening. You advised me ahead of time that you would be asking this on a point of privilege. Having had an opportunity to hear your background, I do not feel it is a point of privilege. If you wish to make a request of that nature, it should go in the form of a notice of motion to the committee and be dealt with in that fashion.

Mr. Philip: On your decision, if I may, it is a point of privilege when a member of this Legislature--

The Acting Chairman: I am sorry, Mr. Philip. That is not the rule.

Mr. Philip: I will challenge your ruling and ask the support of the Conservative members of this committee in this regard, because it is obvious that the Liberals simply want to do a coverup on this matter.

Mr. Gillies: I gather this is not debatable at all.

The Acting Chairman: It is not debatable.

Mr. Mancini: If you knew before what the point of privilege was going to be, you should have known it was out of order and Mr. Philip could then have taken other steps rather than put it before the committee.

The Acting Chairman: He gave me an indication of what he wanted to raise, but I did not know the substance of it. My ruling is that it is not a point of privilege.

Mr. Mancini: You knew that before 10 o'clock.

The Acting Chairman: The point is not debatable. Mr. Philip has challenged my ruling. Shall the ruling of the chair--

Mr. Gillies: If there is going to be a division on the ruling, I will request a recess.

Mr. Callahan: You have to vote on it.

Mr. Gillies: Yes.

Mr. Callahan: On a point of order, Mr. Chairman: You have to vote on the question of whether there should be a division. That is the first vote you should call.

The Acting Chairman: No. Under the rules you can request--

Mr. Callahan: If you look at the standing order, it says--

The Acting Chairman: I am sure the clerk has a copy of the standing order. My recollection of the standing order is that any member can ask for a recess.

Mr. Callahan: Yes, but it has to be voted on. It is old standing order 89(c).

Mr. Gillies: I do not have the standing orders in front of me, Mr. Chairman, and I cannot cite the section, but my understanding is that with any matter to be voted on before a committee, there can be a recess before the division.

The Acting Chairman: It says: "When members are called in for a division, there shall be a maximum wait of 20 minutes."

Mr. Callahan: It is the one before that, Mr. Chairman. That is the one that requires a motion.

The Acting Chairman: This is standing order 108(a): "When a division takes place in a standing or a select committee, the clerk of the committee shall record in the minutes of proceedings the question proposed, the name of the proposer, and if requested by any member, the vote of each member present."

Mr. Callahan: I am requesting--

Mr. Mancini: It is not a motion, it is a challenge to a ruling.

Mr. Callahan: But he is asking for a division. I am requesting a vote on the division.

Mr. Philip: On any division, a member can ask for a recess for a period of time until such members as--

The Acting Chairman: It says: "When members are called in for a division, there shall be a maximum wait of 20 minutes before the vote is recorded."

Mr. Philip: If there is a maximum wait of 20 minutes, we will take our 20 minutes.

The Acting Chairman: If a division is called, there is a maximum wait of 20 minutes.

Mr. D. W. Smith: Mr. Callahan is saying we should vote on whether there should be a division.

Mr. Callahan: I am challenging that, Mr. Chairman. I am suggesting you have to have a motion that has to be voted on by this committee as to whether you even have a division. That is what is what I am asking for.

The Acting Chairman: I beg to differ with you on that, Mr. Callahan, unless you can point it out in the standing orders.

Mr. Callahan: Let me see the rules, and I will show you where it is.

Mr. Philip: This is a point of privilege.

The Acting Chairman: A point of privilege has to be dealt with right now. Subject to any further challenges, a division has been called for, and I will adjourn the committee for up to 20 minutes until we have a full committee here.

Before the members leave, we do not have a witness today for item 2 on the agenda, that is, the retirement of the clerk.

Mr. Gillies: Are we not dealing with that item today?

The Acting Chairman: We cannot proceed without a witness.

The committee recessed at 10:27 a.m.

10:47

The Acting Chairman: Committee members, there is a challenge to the ruling of the chair, and this is the question to be put: Shall the chairman's ruling be upheld?

Those in favour of upholding the chairman's ruling, please indicate. Those opposed please indicate.

Ruling not sustained.

The Acting Chairman: The chairman's ruling has been defeated. Now the committee has to decide whether to let Mr. Philip continue on his point. In order to do that, I understand we have to have unanimous consent of all members of the committee to vote on it.

Mr. Philip: Not on a point of privilege, you do not. I will be only another minute, Mr. Chairman, with your indulgence.

The point I was making was that I made several attempts through Barbara Cotton, a researcher working for the legislative library, to obtain the orders in council and other relevant documents related to the early retirement of certain crown employees working for certain crown corporations, boards and commissions. These were high-level executive officers.

In particular, I was interested in knowing the contracts of Willis Blair and Kenneth Littzen. However, I did supply a list of several other people who have, for whatever reason, left the service of Her Majesty prematurely, after the takeover of the Liberal government.

This was denied by Dr. Podrebarac on behalf of the Chairman of Management Board of Cabinet. After he asked what the information was to be used for, we were informed that confidentiality contracts were signed with those who were leaving the service.

Public money is being spent. The public has a right to know what was in those, and the public has a right to know the essential question that Mr. Podrebarac also refused to answer when Miss Cotton posed it to him, namely, whether the confidentiality agreements were initiated by the government or by the individuals who were leaving the service.

I find it more than a coincidence that a large number of crown employees would be demanding that kind of clause. One can only speculate--but I think it is reasonable speculation--that if it were the initiative of the government, its only purpose would be to hide from the public some rather substantial handshakes for certain key crown employees.

We have already learned that \$3.5 million was spent paying off employees working for the Urban Transit Development Corp., \$350,000 to one employee alone, namely, the president. In addition, he was getting contracting agreements from the same company that was pensioning him off. At the moment, we are dealing with the matter of the platinum handshake of Roderick Lewis. The government backed away and agreed to a very substantial settlement for this gentlemen.

The public has a right to know who initiated those confidentiality agreements, why they were initiated and whether, as a matter of policy, we can concur. I hope the standing committee on public accounts, which is concerned about the expenditures of tax money, would disagree with that kind of policy from now on.

I am asking that a completely independent person, namely, the Provincial Auditor, ask on behalf of all members of the committee for the documents I have requested and that these documents be released through the clerk to all members of the committee at the same time, not only to me personally, but also to all members of the public accounts committee.

I have checked with the Provincial Auditor. He said he would have no problems in assisting the committee in this. The direction is fairly clear. The Provincial Auditor would send a letter to the Chairman of Management Board of Cabinet requesting those documents related to the list of people that I will provide to him.

This has the support of the Conservative members on the committee. I hope it will have the support of the Liberal members as well.

Mr. Stevenson: On this same issue, we too have been doing some

digging into a number of agencies and one particular board, on which a couple of us have been working, because it relates to some problems with companies we have run into in our constituencies. Clearly, there have been some substantial settlements to some people who have been asked to leave boards. We have run into serious difficulty getting information, because all indications are that they have signed confidentiality agreements. As well, all indications are that they were asked to sign those confidentiality agreements.

We will get that information; it is just taking a little longer than we had expected and the course is a little more tortuous than we had expected we were going to have to chart. Obviously, these things exist. It is rather frustrating when one is trying to help a constituent and is running into all these sorts of things going on behind the scenes.

The Acting Chairman: It would seem to me that we now have a couple of courses of action. One is to deal with this matter now in the form of a motion. If that were the case, it would require unanimous consent.

Mr. Philip: I think the Provincial Auditor understands what I am after. If there is some feeling that is what the committee wants, he could proceed forthwith, without the need of a motion.

The Acting Chairman: The other course would be to refer the matter to the standing committee on the legislative assembly, because it is the one that has jurisdiction to seek such documents.

Mr. Philip: A third course would be to issue a subpoena, and that could be done by this committee. We do not need to refer the matter to the legislative assembly committee. It is not responsible for safeguarding the public purse with the same mandate this committee has.

This is clearly a financial matter; it relates to expenditures of what appear to be large sums of money. I do not see it as a procedural matter. This is information the public has a right to know and that this committee needs for its work. I object to any attempt to move that out of this committee. At the moment, we are the committee that is dealing with the golden handshakes. If there are other golden handshakes, we should be the committee that receives the information.

The Acting Chairman: I was wrong when I suggested the legislative assembly committee. Only a point of privilege would have to be referred to that committee. I accept what you have said.

Mr. Mancini: Mr. Chairman, now that your ruling has been overruled and rejected by a majority of the committee, my understanding of the rules is that Mr. Philip now has the opportunity to place his motion and it can be discussed and voted upon. I believe we should pursue that course of action.

Mr. Philip: Are you saying you will give unanimous consent to have it voted on today?

Mr. Mancini: I am not saying that at all.

Mr. Philip: You would delay it one more week.

Mr. Mancini: No. The normal procedure of this committee is that when these matters have to be dealt with when members have these concerns, they give a notice of motion on a Thursday. On the following Thursday, members have a chance to vote on it.

Mr. Philip wants to circumvent that normal procedure. He comes in, throws some information on the committee that we may not have had knowledge about in the immediate past and immediately wants us to vote in his favour on a motion he has presented when we have not had ample time to discuss or to check with other people within our caucus or staff, etc.

We should proceed on a normal basis, which is that the member comes in, puts in a notice of motion and the notice of motion is voted on the following Thursday. That is the normal procedure in this committee. I do not see why we have to circumvent that procedure at this time.

Mr. Gillies: Mr. Philip has asked for some information from officials of the government and has been denied access to that information. There is no particularly intricate set of facts the committee has to understand at this time to support what Mr. Philip is trying to do, which is why we would be quite happy to give unanimous consent.

Let us be clear. As far as I am concerned, all that will do is allow the committee to ask the Provincial Auditor to request a rationale from the appropriate government officials as to why this information is not available to the committee. That is the principle that is at stake. I do not see why we would want to delay that process for a week.

Mr. Callahan: I am newly appointed to this committee, but I am absolutely flabbergasted every time I get an agenda and come in to find the agenda is now being redefined--

Mr. Davis: Something like the House yesterday.

Mr. Callahan: --and redone by the official opposition and the third party. There are rules by which we are all governed that make certain we know what to prepare for a particular hearing and perhaps give an opportunity to get on with the order that is on the agenda. It is now 11 o'clock and we have not touched the agenda. If we are going to continue this practice, maybe we should all just come in and fly by the seat of our pants, which seems to be the way Mr. Philip and the other members do.

Mr. Philip: Perhaps I can facilitate it. By way of introduction, I find it blatantly strange that Mr. Callahan is so poorly informed that he does not understand what a point of privilege is or that a point of privilege takes precedence over any other motion.

Mr. Callahan: We have already dealt with your point of privilege.

Mr. Philip: I find it blatantly strange that Mr. Callahan, who is a lawyer, does not understand that the failure of a public servant to produce information for a member of the Legislature who is involved in a particular kind of inquiry--in this case, the golden handshakes--is a serious point of privilege and therefore merits immediate attention, as does any other point of privilege in the Legislature.

11:00

Having dealt with that and since it is clear we are going to get into a procedural wrangle trying to deal with it today, as a notice of motion to be voted on next week--as usual, the Liberals are delaying our inquiries--

Mr. Callahan: As usual, you guys are fishing.

Mr. Philip: If we are fishing, then somebody must be very scared of what we are going to catch or we would not be denied the information.

Mr. Davis: Coverup. Boatgate with coverup.

The Acting Chairman: The committee would like to hear your motion.

Mr. Philip: I would move that the Provincial Auditor carefully read the correspondence between Barbara Cotton and Mr. Podrebarac and ask that Mr. Podrebarac, the deputy minister of Management Board of Cabinet, supply forthwith information requested and that this information include any contracts, agreements, settlements and terms of settlement in the signed-off letters which were given to the following people:

Bernard Reynolds, Algonquin Forestry Authority; Bradford Bowlby, Assessment Review Board; Hugh MacKenzie, Health Disciplines Board; those officers of the IDEA Corp. who are no longer in the employ of the crown; John Biddell, Inflation Restraint Board; Willis Blair, Liquor Licence Board of Ontario; James N. Allan, Niagara Parks Commission; any executive officers for the Ontario Centre for Advanced Manufacturing; V. E. Oechsle, Ontario Centre for Automotive Parts Technology; Gordon Gow, Ontario Centre for Microelectronics; G. W. Bell, Ontario Centre for Resource Machinery; Thomas Courchene and Peter Jackman, Ontario Economic Council; W. Edwin Jarman, Ontario Energy Corp.; Allan R. Moses, Ontario Housing Corp.; Kenneth Littzen, Ontario International Corp.; and Donald J. MacLean, Ontario Lottery Corp.

Mr. Callahan: How about Sir John A. Macdonald while we are at it? Let us find out what he got.

Mr. Philip: Sir John A. Macdonald was not terminated by the Liberals after they took power. I would think the member might know that.

In moving this motion, I am not suggesting there is anything improper with each of the people on the list. I simply think the public has a right to know what kind of settlements, if any, these people have received.

The Acting Chairman: We will take that as notice of motion to be dealt with one week from today in committee.

Mr. Mancini: I want to reiterate--

The Acting Chairman: Is this a point of order?

Mr. Mancini: No. I want to make a comment. I want to reiterate the fact that you, as chairman--who I assume is knowledgeable about the rules of the committee--with the assistance of the clerk, made the decision to overrule the initial point of privilege. With the authority of the chair, you did that. It was the Liberal members who decided to back your ruling from our knowledge of the standing orders that we must proceed with. This was not something that was pulled out of the air. This was not some kind of hocus-pocus. As Mr. Philip tried to point out, there are legitimate rules in the standing orders that you ruled on which we are trying to follow. That has to be stated clearly in the record.

The Acting Chairman: That point is understood. Any rules of procedure on which the chairman is ruled out of order or overruled then go with the majority of the committee. That is exactly what happened.

Mr. Mancini: I accept that. The record should show that the chairman made a decision on his knowledge of the rules, on historical precedents and on the advice of the clerk. That has to be stated very clearly.

Mr. Gillies: Speaking to the point, there is some truth to what Mr. Mancini is saying. However, the problem in this Legislature is that in recent weeks, the Liberal Party has been using every procedural trick it can come up with to delay the work of any number of committees.

Mr. Mancini: That is not true.

Mr. Gillies: Often a very frustrated opposition has to move to circumvent the paralysis that the Liberal Party would like to inject into the work of legislative committees for whatever political reason. While we have run into that in the standing committee on administration of justice in recent weeks with Bill 105, I would hate to see it come into this committee. This is the position the opposition parties find themselves in.

Mr. Callahan: Just on that point, there is a very simple process that Mr. Philip could have used. He could have served that notice well before today. It always seems that notices arrive on your desk the day you are supposed to address them, and that is totally unfair. That is a holding back, and one can only assume it is being held back deliberately to try to create embarrassment.

Mr. Mancini: Mr. Philip did not bother to talk to anybody before this meeting about his concerns.

The Acting Chairman: Perhaps we can carry on. I appreciate your confidence in the chair, Mr. Mancini--

Mr. Philip: I talked to a lot of people. I talked to CFRB; I talked to CBC; I talked to CTV; I talked to the Globe and Mail--

The Acting Chairman: Order, please. Can we proceed with the agenda?

Mr. Mancini: If Mr. Philip was interested in getting the motion passed, he might have some consultation with other members.

IDEA CORP.

The Acting Chairman: Can we proceed with the agenda? Item 1 on the agenda is the report of the subcommittee. It is in the process of being circulated. The subcommittee has dealt with the matter. If you would like, I will give you a moment to read through the report. Has the subcommittee had an opportunity to discuss it with the various caucuses?

Mr. Philip: I have not discussed it with my caucus, but I am sure they will agree with my recommendation.

Mr. Gillies: If I may speak briefly to the decision of the subcommittee, which I hope will be endorsed by the full committee, I draw members' attention particularly to the three items cited at the bottom of this report, because I think they are very important.

The funding being requested of the Ontario Development Corp. by Wyda Systems is part or all of the \$500,000 that made up the total \$3.5 million requested by that company. In other words, I think it is important that the

committee and the public understand that we are not talking here about any money in excess of that which we knew to be possibly advanced to the company. They have had the \$3 million; they are looking for another \$500,000.

In agreeing to ODC's request that a partial flow of funds be accommodated to the company, the subcommittee wanted it on the record that in terms of the economic decision by ODC, the subcommittee neither approved nor disapproved of that investment decision. I hope Mr. Philip will concur with me. Rather, we wanted to assist, to the extent we could, in ODC's proceeding with a business decision that it wished to make. For any number of reasons, ODC felt it was important that some funds be advanced to the company.

All we are doing is saying that ODC should go ahead, subject to the conditions we have requested, but that at this point we neither approve nor disapprove of the business investment decision by ODC to so do. With that in mind, we were trying to be as accommodating of the company and as accommodating of ODC as we could. I believe this report to the committee is the best solution we could arrive at.

Mr. Philip: This resolution from the subcommittee is two things. First, it is simply an acknowledgement of what is contained on page 65 of our report, namely, that these moneys would be spent; it was part of the original plan.

Second, it shows there has been some response from ODC to our concerns that there be certain safeguards put on, as far as possible, the spending of the remaining \$500,000. This does not cover the entire \$500,000, but it at least inserts safeguards for those moneys that are being spent, about which members of the New Democratic Party and members of the Conservative Party have had some concern, and it shows that the Ontario Development Corp. is listening to the concerns of the members of this committee and is trying to follow some of the suggestions we have made.

11:10

As Mr. Gillies said, this is in no way an endorsement of the investment, but it will facilitate in an orderly way the task the Provincial Auditor is undertaking to find out more information about the nature of that investment and exactly where the moneys have been spent. From that point of view, it is of assistance to the taxpayers and to the work of this committee. For those reasons, I urge that members support this resolution.

The Acting Chairman: Mr. Gillies moves the adoption of the report.

Motion agreed to.

The Acting Chairman: We do not have a witness today because of problems in the witness's attendance. I am pretty well assured we will have somebody to appear before us next week.

Mr. Philip: Who will we have? We have been waiting for--

Mr. Acting Chairman: Perhaps the clerk can bring us up to date.

Mr. Philip: I am not punishing the clerk. It is not his fault. I know he has an excellent job of trying to round up these people. He has worked very hard and very diligently for us.

The Acting Chairman: He was waiting as late as 10:15 this morning.

Mr. Callahan: They are waiting to find out whether they can appear, with all these incidental items beforehand.

The Acting Chairman: Who will be appearing next week?

Clerk of the Committee: I expect it will be one or two of the first three the committee asked to hear from, Messrs. Carman, Harris and Sorbara.

The Acting Chairman: There being nothing else on that item, we move to item 3, which is the notice of motion from Mr. Gillies.

RENTAL HOUSING LOAN

Mr. Gillies: I have a couple of suggestions that may allow the committee to keep working in this regard and meet Mr. Callahan's concern, which I share, that next Thursday we get right down to work on the Lewis inquiry.

For anybody who was not here, I will read the motion I put before the committee.

"That an inquiry be undertaken to review the award of the \$3.5-million interest-free loan through the convert-to-rent program for the Huang and Danczkay development at 350 Queen's Quay West (Maple Leaf Quay)."

I will withdraw. There is a technical problem, which I acknowledge. I have sought advice from the chairman in this regard. The problem is that while the government has indicated the \$3.5 million will flow to the project, it has not flowed. There is a question based on precedent before this committee as to whether we can undertake an investigation of money that has not been advanced.

Members of the committee know there are ways around that. Last year, we had an inquiry into the domed stadium, and we talked about the full range of a \$200-million project.

Mr. Callahan: On a point of order, Mr. Chairman: I do not want to interrupt Mr. Gillies, but it was my understanding that Mr. Runciman, who is the chairman, was considering, for the very reasons Mr. Gillies is putting forward, whether that motion should be accepted. I can only gather that Mr. Gillies is saying either that Mr. Runciman indicated to him privately that he was going to rule that the motion was out of order or that he is withdrawing it--I am not certain which--in which case there really is nothing to discuss.

The Acting Chairman: Thank you, Mr. Callahan. I think Mr. Gillies, who put the motion, is now suggesting it be withdrawn.

Mr. Gillies: That is the point. My concern is that this motion may not stand for a technical reason. Therefore, I am withdrawing it. I will ask the clerk to circulate to the committee a new motion which reads, "I move that the public accounts committee undertake a review of the Ministry of Housing's convert-to-rent program."

I will indicate to members of the committee that the intention of this motion is to effect precisely what the other motion did. It is well within the purview of this committee to inquire into the operations of government agencies; we do it on an ongoing basis. It is through this motion, I am led to understand, that we can effect the inquiry that I wish to undertake.

If I may make a further suggestion to the committee, inasmuch as we have debated at some length the previous motion, and we all know the intent of that motion, and with the concern expressed by Mr. Callahan and others that we would like to get down to work on the Rod Lewis matter at the earliest time next Thursday, I would ask unanimous consent of the committee that we deal with this motion now because (a) we have ample time to do so and (b) the intent of the motion has been debated and is clear to members of the committee.

Mr. Philip: I approach this with mixed emotions. I agree with the substitution motion because it is necessary for us to look at the program. I have mixed emotions because if Mr. Gillies is withdrawing it because he feels in some way his motion is out of order, the original motion was not out of order.

We have to understand that there has been, on the record, the intention of at least two of the parties to expand and open the role of the public accounts committee. That was clearly indicated in writing and signed by the Premier, Mr. Peterson, and the leader of the New Democratic Party, Bob Rae. Therefore, it is a public statement of at least two of the parties in this Legislature that the role of the public accounts committee was being expanded and the role of the Provincial Auditor was being expanded.

One can also argue that over the past several years, the Provincial Auditor and the public accounts committee have, by precedent, on several occasions dealt with matters that were not strictly historical. I see the Provincial Auditor nodding his head.

For those reasons, I would have argued strenuously if the chairman had ruled against Mr. Gillies's motion. It was in order; there was a historical pattern or precedent for it. There was also an intention on the part of at least two of the parties--and obviously in moving this motion, an agreement by that third party, namely, the Conservative Party--in that direction. Therefore, the motion was in order.

Mr. Gillies has withdrawn the motion; that is his prerogative. We must therefore deal with a substitute motion that essentially deals with the same topic but broadens it. My concern about this is the timing. Although we cannot do it during the Christmas recess, because we are not getting one, this is something that might be done early in the new year rather than at present.

Second, it seems to me there are a number of knowledgeable people out there--city planners, municipal politicians and various other people--who have some concern about the way in which the provincial government is running the convert-to-rent program. Therefore, if the committee is going to examine this, there should be an opportunity for some public input from anyone out there who wishes to make representation to the committee.

Perhaps Mr. Gillies will want to amend or change the motion or add to it. Indeed, it might simply be an additional procedural motion that would be required. It would suggest that we set up three or four days in which there could be input from the public on the program, then we could call witnesses from outside to look at it and end up with a series of recommendations useful to the government.

11:20

Mr. Callahan: We have no difficulty in looking into the convert-to-rent program, since it is a program that was instituted during the

last days of Pompeii, or the previous Conservative administration. I support what I said before, and Mr. Gillies has mentioned that we would like to get on with these things.

Part of the problem is that we have just voted against giving Mr. Philip unanimous consent to bring forth a motion and it has been put over to next week to be dealt with. I have no difficulty in giving unanimous consent to Mr. Gillies's motion, but it seems to me we sort of reject one member's motion and accept the motion of another. I do not have difficulty with that, because it is certainly within our purview to do that.

The problem is, as I said before and I reiterate, I find it very difficult to come to this committee and suddenly find a motion on the desk that could have been served well in advance. We could have been advised by Mr. Gillies well in advance of today that either he had spoken privately to Mr. Runciman and Mr. Runciman had indicated he was not going to rule in his favour--if that was the case--or he was going to withdraw his motion, as he tells us this morning at the 11th hour.

It becomes very difficult to try to organize what you have to prepare for. We are not all wizards who can suddenly jump into a particular issue. I think that is very important. Otherwise we wind up with a shotgun approach where every time a member comes in he says, "Let us get these witnesses; let us do this; let us do that." Soon we will find we are going to be occupied for the next 20 years and we will have no order. We will come in here and just fly by the seat of our pants. That is not fair to the members of this committee.

Someone was asking who would be the first witness we would hear in the Lewis matter. I do not imagine they are going to sit outside and wait for us to decide what we are going to do that day that has been suddenly popped on your desk. I do not know whether what is being done is to surprise us or because the typist cannot get it ready for a day or two before, but it is certainly throwing this committee into disorder.

I am prepared, and I think my colleagues are prepared, to support Mr. Gillies's request for unanimous consent. I would then ask whether it is going to precede Mr. Philip's motion that was put over to next week or it is going to be behind it. How are we going to deal with it? This is not a criticism of the clerk, but I would like an agenda in advance so I can come in here and be sure we are not going to have six or seven other Christmas wish lists placed on it by the various members. If they want to do that, they have the procedure to let us know in advance.

Having said that, I am prepared and I believe we are prepared, because the Liberals want to get on with this matter and all these matters in an orderly fashion, to give unanimous consent to Mr. Gillies's motion.

The Acting Chairman: Before there is response, let me say I think it is the purpose of a subcommittee, in consultation with the chairman, to organize these items that do come up--not to make the decision but to organize the timing of it.

Mr. Callahan: The subcommittee cannot organize the procedures of this committee when you have people coming in at the last minute asking for particular items. It just becomes a situation where--

Mr. Gillies: If I may respond to this, while I appreciate the--

Mr. Philip: On a point of order, Mr. Chairman: Mr. Gillies is not asking for this item to be on at a specific time. He is asking that the intent

of it be agreed to. The subcommittee will then propose an agenda as to when it can be scheduled.

The subcommittee did draw up a schedule, which was approved by this committee. Unfortunately, certain witnesses, namely, Mr. Sorbara and one or two others, were not able to meet the agenda of this committee. Therefore, we found ourselves with a schedule but with people like Mr. Sorbara saying they cannot be here.

It is not our fault if the witnesses cannot appear, even though we were able to give them a couple of weeks' notice. I recognize that he and some of the others had legitimate claims on their time, which cabinet minister are bound to have, and they probably have legitimate excuses and reasons as to why they could not be here.

However, there is a planning system in this committee. There is a subcommittee that works very hard and very effectively at scheduling the work of the committee. The fact that we have so much on our plate says more about the management of the government and less about the mismanagement of this committee.

Mr. Gillies: First, I want to indicate to Mr. Callahan that I appreciate his indication of support for unanimous consent. I also appreciate that Mr. Callahan is new to the committee, but I want to assure him that the item I have put before the committee, the question of looking into the convert-to-rent program and particularly the Huang and Danczkay loan is an item of business that has been known to the committee and before the committee for some weeks.

The substitution of the motion I put today, as opposed to the other one, is purely a technical move by me to try to accommodate this committee in looking at an item on today's agenda, which is that very question. I am trying to accommodate as much as possible the committee's sticking to its agenda by dealing with this today, so we can get on with our other business next week. Hence, my request for unanimous consent and my pleasure that Mr. Callahan has agreed to it.

Mr. Mancini: If I may add a short comment or two, the reason Mr. Gillies has withdrawn his original motion is very clear: It was out of order and the chair was going to rule it so. That should be on the record.

Mr. Gillies: If it pleases Mr. Mancini--

Mr. Mancini: It certainly does.

Mr. Gillies: --who really enjoys these political games more than the substance of what we are doing here--I was quite aware that the motion I put was out of order. The new motion is in order.

Mr. Mancini: I thought I had the floor. My good colleague not only uses up his time but also wants to use up everyone else's time to get everything he has on his mind on the record. That is fine; he may interrupt any time he likes. However, the reason the motion was withdrawn was that it was very clear it was out of order.

As has been stated by Mr. Callahan and others, the reason we are agreeing with the motion is that we are trying to accommodate the wishes of the committee and it has been on the agenda for a number of weeks. There are no political games whatsoever.

It is important that the record show that on occasion there are motions that are out of order that may or may not have been ruled upon. In my view, a systematic case is being built up for a number of motions being put forward, ruled out of order by the chairman and then having the chairman's ruling overturned. That is very important in parliamentary procedure. That is why we have rules. Mr. Gillies may think our rules are frivolous and a political game--

Mr. Gillies: On a point of order, that rather inane comment by Mr. Mancini is imputing motive to me. I have the highest respect for the orders and procedures of this House and this committee. For him to suggest otherwise, while frivolous, is not appreciated.

Mr. Mancini: As the record will show, halfway through my first comments, the member for Brantford interrupted and said very clearly that I was not interested in anything substantial, other than political games. It was his privilege to say that. Some of us let those comments roll off our backs, because that is the way it goes. Others are more sensitive. They seem to like to dish it out, but if it comes in their direction in any way whatsoever, they become extremely sensitive. Of all people, Mr. Gillies should be able to take things such as that.

The Acting Chairman: Mr. Mancini, we have heard your point of order at great length.

Mr. Mancini: I was just trying to help you, Mr. Chairman.

The Acting Chairman: I have too many speakers. Mr. Smith and Mr. Davis would like to speak on this, but the point has to be made that Mr. Gillies removed his previous motion from the record and now has another motion in front of the committee. We are still having a wide-ranging discussion of whether--

Mr. Philip: On a point of order, Mr. Chairman: Do you not think it would be appropriate for you to tell Mr. Gillies to stop beating up poor Mr. Mancini?

Mr. Gillies: Mr. Mancini can take care of himself.

11:30

The Acting Chairman: We should move ahead, because we have a fourth item on the agenda, an in camera item.

Mr. D. W. Smith: I listened with great intensity to all these senior members of this committee. As I hear it and as Mr. Gillies has said, this is only a technical change in the motion. However, I hope a precedent is not being set because, in my opinion, this is not just a technical change in a motion; this is a general review of the Ministry of Housing's convert-to-rent program.

When other people bring in motions such as this and they are turned down, I hope you do not just bring another totally different motion forward and have it accepted, because I think we are setting a precedent and I am not sure whether we should be giving unanimous consent. I will go along with my peers, but I want to put that on the record.

The Acting Chairman: That debate can be saved for the motion.

Mr. Davis: I point out to my learned colleague Mr. Mancini that part of the democratic process is the right of a committee to overrule the chairman when he makes a ruling it believes is in error or a wrong interpretation.

Mr. Callahan: Come on. That is called a gangup.

Mr. Davis: It is always the right of the committee to make that type of decision. It is always the prerogative of the chairman to make an interpretation. I point out to Mr. Mancini and some other members of the government that they may like to go back to Hansard and read the record of how they conducted themselves when they were members of the opposition and used the opportunity to challenge different recommendations from the chair. It would be interesting for them to do that.

The Acting Chairman: What we have to do now is agree on whether we are going to deal with this motion now. Do we have agreement?

Agreed to.

The Acting Chairman: Mr. Gillies has a motion before the committee which states that the public accounts committee undertake a review of the Ministry of Housing convert-to-rent program.

Motion agreed to.

Mr. Callahan: Before we go on, I have a question of clarification. I would like to know for the future whether a member is entitled to withdraw a motion under consideration by the chairman, or must the chairman make a ruling?

Mr. Gillies: Any time before a vote.

Mr. Callahan: I would think that if it is under consideration by the chairman--

The Acting Chairman: The motion is no longer before the committee. It has been withdrawn. The regular chairman of the committee prepared an answer to that but the answer is not required when the motion is no longer before the committee.

Mr. Callahan: Has anyone seen the answer? I would like to see it. I am curious about how he ruled.

The Acting Chairman: The motion is no longer before the committee so the ruling--

Mr. Callahan: Is it going to be shredded?

The Acting Chairman: It is going through a shredding machine.

The matter is now before the committee and will be scheduled by the subcommittee.

That completes the agenda, other than item 4, which is an in camera item.

The committee continued in camera at 11:32 a.m.

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STANDING COMMITTEE ON PUBLIC ACCOUNTS

GOVERNMENT INVENTORIES
RETIREMENT OF CLERK

THURSDAY, NOVEMBER 27, 1986



STANDING COMMITTEE ON PUBLIC ACCOUNTS

CHAIRMAN: Runciman, R. W. (Leeds PC)
VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)
Barlow, W. W. (Cambridge PC)
Callahan, R. V. (Brampton L)
Davis, W. C. (Scarborough Centre PC)
Epp, H. A. (Waterloo North L)
Mancini, R. (Essex South L)
Philip, E. T. (Etobicoke NDP)
Pope, A. W. (Cochrane South PC)
Smith, D. W. (Lambton L)
Wildman, B. (Algoma NDP)

Substitutions:

Knight, D. S. (Halton-Burlington L) for Mr. Epp
Villeneuve, N. (Stormont, Dundas and Glengarry PC) for Mr. Davis

Clerk: Arnott, D.

Staff:

Fritz, H., Research Officer, Legislative Research Service

Witnesses:

From the Cabinet Office:

Carman, R., Secretary of the Cabinet and Clerk of the Executive Council
Jacobsen, P., Associate Secretary of Cabinet for Executive Resources

From the Ministry of Colleges and Universities:

Sorbara, Hon. G. S., Minister of Colleges and Universities and Minister of
Skills Development (York North L)

From the Office of the Provincial Auditor:

Archer, D. F., Provincial Auditor

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON PUBLIC ACCOUNTS

Thursday, November 27, 1986

The committee met at 10.10 a.m. in room 151.

Mr. Chairman: Come to order, please. Before we get into the regular agenda, we can mention a couple of things for the record and for the interest of members. Attending the meeting this morning in the audience is Terry Lant, who is the director of audit, Office of the Auditor General, in the state of Victoria, Australia. Mr. Lant, welcome to the proceedings. It is good to have you with us.

We have two items listed on the agenda. One is in respect to Mr. Philip's notice of motion. I suggest that we set aside the last half hour of the schedule from noon to 12:30 p.m. to deal with Mr. Philip's motion. The rest of the time will be devoted to the question of the retirement of the Clerk. We have had Mr. Carman on hold for a couple of weeks, and I would not like to see that delayed again.

Mr. Mancini, since you have circulated a notice of motion, it may be an appropriate time, before we call in Mr. Carman, to deal with it.

Mr. Mancini: I appreciate your courtesy.

GOVERNMENT INVENTORIES

Mr. Mancini: We have had the tabling of the Provincial Auditor's report, I guess it was yesterday. I attended part of the lockup and went through some of the notations the auditor had made in his report. An item I found somewhat disturbing and about which I felt there was not enough information available was the item noted on page 32. I want to use this opportunity as a notice of motion and to read the motion so the members understand my concerns.

Mr. Chairman: Mr. Mancini moves as follows:

Given the statement on page 32 of the Annual Report of the Provincial Auditor of Ontario for the year ending March 31, 1986, that:

"When physical inventory counts at ministers' offices were conducted, ministry staff were unable to locate many items. In our test counts of over 225 assets listed in inventory records for ministers' offices, 60 items could not be located. These items included desk lamps, typewriters, dictators, colour televisions, 35 millimetre cameras and accessories, overhead projectors and transcribers."

And given the memorandum from the Ministry of Government Services dated June 25, 1985, regarding the transition of government and the appropriate relocation of office property, the standing committee on public accounts requests the Provincial Auditor to investigate further the missing assets mentioned above.

Mr. Mancini: I believe this is a very serious item, when we see the auditor write a report and indicate in it that he has done a search on 225

assets, as I understand, and of these assets at least 60 items could not be located. These are not items such as pens and pencils or erasers, but items as large as overhead projectors and as expensive as typewriters. I want to find out what sort of typewriters were missing because some typewriters are worth \$3,000 and more.

When I see this noted in the auditor's report, it serves to cause further public cynicism of the political process when people read this and find out that these items from ministerial offices have gone missing for some reason. We cannot let this matter lie the way it is. We need to receive more information from the auditor. I would like to know, for example, whether he did a check on all the ministerial offices, including the secretariats which were eventually abolished, and from which ministerial offices these items were missing and what kind of items they were. I would also like to know the cost of these items.

From the information I have read from the report, I do not believe the auditor did a review of each ministerial office. You can correct me on that later. It was more of a cursory review of 225 items that were chosen, and through that review the auditor found at least 60 of them were missing. It is too important a matter just to let lie in the auditor's report the way it was stated. We absolutely have to have more information.

When incidents as glaring as this, which can taint all members of the Legislature, are brought forward by the auditor, it is the duty of this committee to find out where the problem lies in order to exonerate all the other members. I do not think it is fair to have anyone left with the impression that this happens in all ministerial offices or that it happens in any ministerial office.

Mr. Chairman: I have been fair to you. We traditionally try to give someone giving notice about five minutes for comments.

Mr. Mancini: I will wrap it up. Perhaps in a more in-depth review we will find that these items were missing for very good reasons, that they were sent to some deep hole and left there or what have you, but it is important for us to look into it.

Mr. Chairman: I know Mr. Pope is straining at the bit to make a comment on this, but the tradition in respect to notices of motion is that we do not debate them. Unless there is unanimous consent to deal with the motion this morning, it will appear on our agenda next week. Mr. Mancini, as the mover of this motion, is it your intention to ask for unanimous consent to have it dealt with today?

Mr. Mancini: I do not want to subvert the process; I just want to use the process to give members notice that I will moving it next week.

Mr. Chairman: I can appreciate the interest of Mr. Pope, a former executive council member, in this subject.

Mr. Mancini: I am sure he was not involved.

Mr. Chairman: I feel much the same way but we are going to have to restrain ourselves until next week.

Mr. Pope: I want to give notice that I am going to move an amendment next week. Can I do that?

Mr. Chairman: Sure. Go ahead.

Mr. Pope: This is one of many items in the auditor's report. It is the only one the Liberal member wants to bring in. There are other items of government failure. I am surprised he does not make the other items of government failure high priorities. I think I know why.

Mr. Chairman: Is this an amendment?

Mr. Callahan: It certainly does not sound like one.

Mr. Pope: You would know about that. I want to serve notice that I am going to move an amendment to this motion next week to include the computer contracts that have been signed by this government, the expenses of the current ministers and parliamentary assistants on furnishings and office equipment and the Premier's travel costs and use of government aircraft.

Mr. Chairman: We can discuss the merits of that next week.

Mr. Philip: I have a question on a point of order.

Mr. Chairman: A point of order? I am dubious, but go ahead.

Mr. Philip: I can understand Mr. Pope's amendment being in order and appropriate, because it is a motion on its own, opening up a new area of investigation for this committee, but I do not understand Mr. Mancini's motion. The normal procedure of this committee is that when the auditor's report is tabled, we decide which items in the report are of most interest to us. I would like to know where the government manages to--

Mr. Mancini: Is this a point?

Mr. Chairman: It is a legitimate point of order in respect of past practices.

Mr. Philip: I would legitimately like to know where \$700,000 of booze disappeared to. There may be criminal acts involved. Surely the procedure in dealing with that is to call the appropriate ministers--in the case of Mr. Mancini's notice of motion, the acting Chairman of Management Board (Mr. Nixon)--and ask for a full accounting of why the system is so inept that by accounting, thievery or whatever other procedure, that furniture and other things are missing.

Mr. Mancini: This is not a point of order.

Mr. Philip: We cannot ask the auditor to reinvestigate something before we have had an inquiry.

10:20

Mr. Chairman: I am going to call you to order, Mr. Philip. I think we are going a little too far. However, we can deal with that matter next week when this comes to the floor. It is a legitimate point and one we can consider in the interim: past practices of this committee in dealing with the auditor's report once it is tabled.

We can consider it next week. I do not want to delay. We get into these procedural hassles every week, it seems, and we accomplish very little. We

have kept witnesses waiting for weeks on end about matters that are on our agenda. It is my decision at this juncture to move ahead and call our first witness in respect to the retirement of the former Clerk. Mr. Carman, will you please come forward?

Mr. Callahan: On a point of order, Mr. Chairman: I do not think we dealt with Mr. Pope's point of order.

Mr. Chairman: He did not make a point of order.

Mr. Mancini: Excuse me, Mr. Chairman, how can he give notice to make an amendment to the motion I have made when we do not have anything in front of us to judge at present or even to consider whether it is in order? I think it is out of order. It may be a good motion on its own, but--

Mr. Chairman: I do not want to pursue this. As I see it, Mr. Pope's intent was simply to put you and the rest of us on notice that this will be coming forward.

Mr. Wildman: I do not want to prolong this. I just want to make one proposal I think would be helpful to the committee. As a result of the tabling of the auditor's report, there are going to be a number of items that various members of the committee will wish to pursue. I suggest that in the interim, between now and next week, the subcommittee of the public accounts committee meet and make some proposals on which items in the auditor's report should be pursued by the whole committee. That would be useful.

Mr. Philip: On a point of order directly related to the auditor, Mr. Chairman: It would be very unfortunate if, in asking the auditor to do a study on a study, he might be mistaken for the Minister of Consumer and Commercial Relations.

Mr. Mancini: The auditor has done a number of studies on other points, and we have restudied what he has done.

RETIREMENT OF CLERK

Mr. Carman: Is it be in order to ask Pat Jacobsen to join me? She acted on my behalf for part of this process while I was away.

Mr. Chairman: Certainly. For purposes of the record, will you identify yourselves and your roles?

Mr. Carman: I am Bob Carman, secretary of the cabinet.

Ms. Jacobsen: I am Pat Jacobsen, associate secretary of the cabinet and acting secretary of cabinet for a one-week period.

Mr. Chairman: Mr. Carman, do you have any comments to make at the outset?

Mr. Carman: I am not certain how you wish to proceed. It might be useful if I went through a chronology of events I put together for my records. Would that be a useful starting point, to give you some kind of overview of what happened in terms of the discussions with the Clerk Emeritus?

Mr. Chairman: That sounds like a good starting point.

Mr. Philip: That was my first question. Do you have a copy of that you could hand out to us?

Mr. Carman: I do not, Mr. Philip. I have only one with me.

Mr. Philip: Is it possible to get copies? I am not asking for personal notes, but if you have a typed chronology, it might be useful.

Mr. Carman: It is a typed chronology, naturally, so I can read from it, but it is more or less a set of personal notes.

Mr. Chairman: Go ahead.

Mr. Carman: On April 4, Mr. Lewis met with the Premier (Mr. Peterson). At that meeting, the whole question of resignation was discussed, and two issues were raised by Mr. Lewis which had particular importance for me. The first was that he said he wished to remain active and the second was that he had a problem with the adequacy of his pension from the public service superannuation fund. Subsequent to that meeting, the Premier asked me to meet Mr. Lewis and have a discussion with him on these two issues.

On April 17, I met him. He delivered to me a copy of a memo dated November 18, 1981. By the way, I also have an official file. I would be happy to have copies made of all the material in it for the members of the committee if they would find that helpful. That memo is in the file. It indicated that the pension was going to be about \$39,000, which was less than he could have expected had he been retiring with the rank and status of a deputy on a full 70 per cent pension.

He indicated to me, and confirmed what he said to the Premier, that he did not want to retire to inactivity. We then had a discussion about the possibility of his writing a book. My original suggestion was that, given his background with the Legislature, perhaps he could write something on legislative protocols, perhaps a manual that would be of interest to new members of the provincial parliament. He indicated that was nearing completion. We talked at some length about the difference between a manual, on the one hand, and a more detailed treatise, on the other. We also talked about the question of a history of the Legislature during what I described as the Lewis era, which is the era of Roderick Lewis and his father.

I also agreed to examine the pension problem and report back to him. I immediately contacted the Ministry of Government Services. They confirmed there was a pension problem in that he had not contributed after turning 65. After that, I contacted a Miss Elizabeth Aboud. Miss Aboud is the director of the pensions branch in the human resources secretariat.

I asked her to examine this thing in some detail to make sure there was no error and to determine whether there was a resolution. On May 15, Miss Aboud reported on the situation and included in her report a recommendation to resolve the pension issue, that is, the purchase of an annuity. She included a legal opinion which she had asked Graham Stoodley to prepare, which was dated April 24, 1986. I think that has already been tabled in the House.

Subsequently, I advised both the Premier and the Treasurer (Mr. Nixon) that there was a solution to Mr. Lewis's pension problem through the purchase of an annuity. If one purchased an annuity of the appropriate size, one could bring up his pension to what a deputy minister with his years of service would expect, which was something in the \$60,000 range.

At about that time, my office requested Miss Aboud to forward a copy of the annuity proposal to Miss Barbara Sullivan, who is Mr. Nixon's executive assistant. The purpose of asking for that material to be forwarded was so that it could be considered at the next meeting of the Board of Internal Economy. That was done on June 12.

Prior to June 27, the Premier requested that I meet with Mr. Lewis to go over the things I had discovered. I requested the Ministry of Government Services to explore some office space that might be available in Willowdale or North York. The reason for that is that Mr. Lewis lives in that part of Toronto and I assumed he might wish to have office space a little closer to his home.

I received the space report on the morning of June 27 and on that morning I met Mr. Lewis. I indicated the way that his pension could be brought up to the level that a person of the rank and status of deputy minister could expect, and I indicated to him that I had found an office in the Willowdale or North York area so that he would be closer to home.

He said that was quite interesting and thanked me for my help. However, he did not want to move away from the Legislative Building. He wanted the office next to his present office in the building, and although he appreciated the annuity, he asked me how the balance of the money would be made up in order to get him to his full current salary of \$91,500. He further went on to indicate that he had a legal opinion that he was entitled to the position of Clerk for life.

In my reply, I indicated that I had looked for space only outside of Legislative Building. In terms of the space in the building, that was beyond any jurisdiction that the Ministry of Government Services and I had, and I said he would have to address that request to members of the Legislative Assembly.

10:30

In my discussions with the Premier, I had not been asked to consider anything more than bringing his pension up to what a deputy minister would receive. As a consequence, I advised him to bring that matter also to the attention of members of the Legislative Assembly. I indicated that I would also report our conversation to Mr. Nixon, and subsequently I did.

On July 2, 1986, the resignation of Mr. Lewis was announced in the House. The next event is September--

Mr. Wildman: Could I interrupt? What again was the date of the conversation you had with Mr. Lewis?

Mr. Carman: It was June 27, 1986, prior to the announcement in the House of the resignation.

On September 8, 1986, the Clerk wrote to Mr. Nixon. I will not read the entire letter, but in it he indicated: "I hope you will agree that the terms that we discussed with respect to my retirement, new duties and remuneration should be firmly settled before the order in council for my successor's appointment is passed.

"I understand that a meeting of the Board of Internal Economy will take place shortly and I would hope that the matter of salary, in addition to my

pension and the annuity which I was told is being purchased for me, could be settled at that meeting."

Mr. Nixon replied to him on September 17, 1986, and said: "This will acknowledge your letter of September 8, in which you refer to our discussion leading up to the announcement of your retirement last June. I indicated at the time that I was speaking for the Premier in that Mr. Robert Carman, the secretary of the cabinet, had been asked to discuss the matters of pension and the provision of facilities in support of any continued duties that you saw fit to undertake.

"While I am not familiar with the details of the pension discussions, I felt that Mr. Carman was in a position to see that suitable arrangements were made. I also understood you were interested in undertaking editing of rulings, etc., and that Mr. Carman was going to arrange suitable accommodation that would be convenient for you.

"I note that you have indicated a desire to continue using facilities in the Legislative Building, and while I appreciate your abiding interest in the matter, I want to make it clear this request was simply passed on to my colleagues and to Mr. Carman.

"I have taken the liberty of sending a copy of my response to Mr. Carman, and I am sure that suitable disposition of these matters will be arrived at soon. I am also asking him to prepare a proposal that the Board of Internal Economy will consider with respect to a supplement to your PSSF pension."

Mr. Philip: May I just ask a question on that one letter?

Mr. Carman: Certainly.

Mr. Philip: The gist of that letter is that at that point, Mr. Lewis was being told that any agreement was subject to the Board of Internal Economy, that no agreement had been reached and no promises were being made. The letter simply said the matter was under consideration, that it had heard what he was asking for, but the Board of Internal Economy would have to pass a decision on that.

Mr. Carman: That is absolutely correct.

Mr. Philip: There was nothing that could be seen as a promise or a contractual obligation of any kind at that point?

Mr. Carman: That is right.

Mr. Philip: Okay.

Mr. Carman: On September 23, 1986, Mr. Lewis wrote to me and said, "I know you have received a copy of Mr. Nixon's letter of the 17th instant and I expect that I will be hearing from you shortly with respect to the annuity that we discussed and the supplementary salary arrangements."

Now I would point out that Mr. Nixon's letter did not refer to supplementary salary arrangements. It referred only to the supplement to the pension.

Then Mr. Lewis goes on to talk about the question of his location. I will not read everything into the record. It is quite lengthy, but he does express a wish to remain in the Legislative Building because staff of the Clerk's office expressed an interest in continuing to work with him and work on his book.

He says, "I will be very pleased to discuss the necessary arrangements with my successor, whom I have already met, as soon as it is convenient for him."

Mr. Philip: If I may just stop you there, at this point he is asking for the possible use of other staff of the Legislature--not just the secretary, but other staff.

Mr. Carman: Perhaps I had better read it and then we will know exactly what was requested.

"With respect to the question of my location, I must point out that all of my book to date, which is almost three quarters finished, is on the word processor in the Clerk's office for the purposes of editing and expansion. It is therefore essential that I be convenient to that service.

"I should point out that with the retirement of Mr. Callfas and an expected realignment of duties resulting therefrom, space becomes available in this area, and I suggest as vigorously as possible that the natural location for me is in the office next door to my present office.

"This would not only solve the problem of the word processing, but the ladies who are at present my administrative assistant and my secretary have expressed a wish to do the additional typing necessary for the completion of my present book and the volume that you have suggested I should embark on thereafter, that is, a history of the Legislature. Moreover, such an undertaking will necessitate a lot of research assistance from the research people in the library, at least one of whom is most anxious to get into this with me.

Mr. Philip: May I ask you to back up to that last sentence on the additional volume that you had suggested. Where do we go in terms of the documentation? That takes us back to where?

Mr. Carman: The additional volume I suggested was back in April. It was never discussed with Mr. Lewis after that because, when I had the discussion with him on June 27, I felt my role had come to an end. I had made a suggestion to him about an office in North York, which he rejected. Although appreciative of the annuity, he said he wanted to deal with other matters and I felt until all those other matters were dealt with that my role at that stage was officially functus.

Mr. Philip: I have been around here for some time and I have yet to see someone who has been an MPP or a leader of a party, to whom someone at some point in time upon retirement has not said, "Gosh, it would be nice if you wrote a book on the history of your experiences here." Was that the nature of your suggestion to him or did you see it as some official assignment, speaking on behalf of the government, that you would like him to undertake?

Mr. Carman: It was more in terms of the former, Mr. Philip. He wanted to keep busy. It seemed that perhaps a useful product could result from

that. If in return for some office space in North York that product could be useful to members of the Legislature and the public service generally, that seemed to be a useful way to proceed.

Mr. Philip: There was in no way--

Mr. Chairman: We are not going to get into extensive questioning. Mr. Carman is giving us a chronology of the events. It is inappropriate for you to carry on questioning at this stage. If you have some concern or wish an elaboration on a point, that is fine.

Mr. Philip: Except that we are dealing with a whole bunch of documents--

Mr. Chairman: You are still going to have a significant opportunity to deal with this, and I do not think it is fair to other members of this committee to have you monopolising the situation the way you are attempting to do. Mr. Carman, do you wish to proceed, please?

Mr. Carman: Having received Mr. Lewis's letter of September 23, I immediately contacted Mr. Nixon and indicated to him that this matter clearly was in the ambit of the Legislative Assembly to deal with. It was a request for space, a request for the assistance of certain employees. Mr. Nixon arranged for me to attend a meeting of the House leaders the following day. On September 24 in the afternoon, I attended a meeting of the House leaders to acquaint them with what I considered to be the nature of the problem.

I covered all the pieces that were at issue. I indicated there was a pension from the public service superannuation fund. I indicated at that time it was about \$39,000. Since then, the figure has been determined to be \$38,400 or thereabouts. He has a statutory entitlement to that.

The second item was the question of the annuity. I indicated to the House leaders an amount of approximately \$220,000. Until you actually determine the size of the annuity that is to be achieved and all the other arrangements regarding whether this is to be escalated and what percentage is to be provided as a survivor benefit, it is impossible to calculate the actual amount, but I said it was in that ball park of \$200,000 or \$220,000.

I indicated that Mr. Lewis did wish the office next to his in the Legislative Building and outlined to them the content of the memo I just read. I indicated that he had requested a payment above the pension and annuity in order to retain his full salary. I also indicated that Mr. Lewis, as part of his work, was receiving services from the government garage.

10:40

At that meeting, the House leaders said: "We want to deal with the entire package for Mr. Lewis. Leave it with us. There is no need to do any further work on this." I indicated that when they had made a decision, I would be prepared to facilitate anything, from the standpoint of the executive, and they said they would get back to me when and if they had a decision.

Mr. Lewis then wrote to me again on September 26. I will read this letter:

"Further to Mr. Nixon's letter of the 17th, which I did not receive until the 23rd, my letter to you and my recent conversations with Miss Ward"--who is my secretary--"I wish to make the following points:

"While the Clerk of the House is appointed by order in council, the appointment cannot be rescinded by order in council. This can only be done by death, resignation or an address for cause from the Legislative Assembly to the Lieutenant Governor. As the Premier has announced my retirement, I am quite prepared to submit my resignation as soon as the promises that were made to me at the time are implemented and confirmed in writing. Recent events have convinced me not to trust anyone until I have it in black and white.

"I think you will agree that there has been ample time since July 2 for these matters to have been put in place and the procrastination not only places me, but my successor, in a very embarrassing position. The present situation is most unfair to both of us."

I immediately called Mr. Lewis and made arrangements to see him on Monday, September 29. That night I phoned Mr. Nixon, who by that time had left Canada and was in the Pacific Rim. I indicated that I had received Mr. Lewis's letter of September 23, that I intended to meet him on Monday and that the position I planned to put before Mr. Lewis at the meeting was the one the House leaders had agreed to at their meeting on September 24. Mr. Nixon concurred that this was the approach I should take with Mr. Lewis when I met him on Monday, September 29.

On September 29, I met Mr. Lewis. I advised him of the September 24 meeting of the House leaders. I learned from Mr. Lewis that he was not prepared to tender his resignation or vacate his office until his demands had been met. At that same time, I confirmed my conversation with Mr. Lewis in a letter to him. On September 29, I wrote to Mr. Lewis and said:

"Dear Mr. Lewis:

"This will confirm our discussion of September 29, 1986, and my response to your letter of September 26, 1986, regarding your current and future status.

"I would like to confirm that all of the arrangements for your future status are being reviewed by members of the Legislative Assembly. The executive branch of government is prepared to facilitate the decisions of the assembly but is not directly responsible for taking the required decisions.

"You indicate that certain promises were made to you earlier. The only area which I was asked to work on in order to resolve an inequity was your pension entitlement. An arrangement was proposed that would combine the public service superannuation fund entitlement with a single premium annuity to provide an annual retirement income equivalent to the maximum pension entitlement of a deputy minister. I met as recently as last week with the House leaders of the three parties and outlined this proposed approach to them. I indicated that I would ensure the necessary administrative arrangements are put in place once a decision is taken.

"The House leaders advised me that they wished to consider all of the future status issues as a package, including pension, space and support staff, and would convey their decision once it has been reached.

"I will be pleased to assist in any way that I can once the Legislative Assembly has reached a conclusion on this matter."

Mr. Philip: Was that October 1?

Mr. Carman: No, that was September 29.

After I met with Mr. Lewis and learned he would not leave his office until this matter had been settled, I phoned Mr. Nixon and advised him of the comments Mr. Lewis had made at the September 29 meeting. I indicated he might wish to consider this matter for 12 hours and call me back after he had considered it. The times are about 12 hours different from where he was, so we were catching each other morning and evening respectively.

The next morning he called me and gave me instructions to call Brock Armstrong, who is one of Mr. Nixon's senior advisers. He asked me to ask Mr. Armstrong to negotiate a proposal with Mr. Lewis on specific terms for review by the Board of Internal Economy.

Following that, I contacted Brock Armstrong. I conveyed Mr. Nixon's instructions to him. At that point, I also left Ontario for the Pacific Rim. I turned over the responsibilities from there on out to Pat Jacobsen.

Ms. Jacobsen: I began acting for Mr. Carman at noon on September 30. In the briefing, he outlined that if Brock Armstrong, on behalf of the House leader, came forward with anything to do with the Clerk, I was to continue this consultative role.

I was asked by Brock Armstrong on the afternoon of September 30 to record the result of the negotiations he had had with Mr. Lewis. I prepared that on the stationery of the secretary of the cabinet. That was the October 1 letter I wrote and signed over Mr. Carman's name.

It is to Mr. Lewis: "In confirming your decision to relinquish your position as Clerk of the Legislative Assembly and assume the title Clerk Emeritus, the following terms have been agreed to, subject to the approval of the Board of Internal Economy." I then outlined the public service superannuation fund entitlement, to be combined with the single-premium annuity, for an annual income of \$60,000, and, "During the period you are actively working on your history of the Legislature...you will receive...additional entitlements," including an annual stipend of \$31,500.

Mr. Mancini: May I stop you there for a second?

Ms. Jacobsen: Sure.

Mr. Mancini: Was there any thought or consideration given to how long it would take to finish the 25 per cent of this one book that had not been completed and the second book that was contemplated?

Ms. Jacobsen: I was not a party to any discussions on that. I do not know whether Mr. Carman was.

Mr. Philip: I am confused by your first sentence. It says, "Subject to the approval of the Board of Internal Economy." This is the letter over Mr. Carman's name, dated October 1, albeit signed by you.

Ms. Jacobsen: Yes.

Mr. Philip: His letter of September 29 states it is subject to the Legislative Assembly decision. To say it is the Board of Internal Economy is

really saying subject to the cabinet, because the cabinet has control over the Board of Internal Economy. There is a difference, particularly in a minority government, between the cabinet and the Legislature. Was Mr. Carman aware of that move, from saying it would be subject to the Legislature to saying it would be subject to the approval of the government?

Mr. Carman: This letter was written while I was away. I did not read it until I came back from the Far East.

10:50

Mr. Philip: It is a change of your intent of September 29; a major change.

Mr. Carman: That is quite correct. The resolution by the House leaders envisages a different format, for the Legislative Assembly to make a decision rather than the Board of Internal Economy, although I would say the Board of Internal Economy is also somewhat distanced from the executive.

Mr. Philip: None the less, the Board of Internal Economy decision is controlled by the government; the legislative decision is controlled by the Legislature. One is a lot broader than the other. In fact, what you did was to take away the authority--or the original promise or concession was much less of a concession or promise, because in a minority government there was the foreseeable possibility that the two opposition parties combined would not want him to receive all this money. You moved from that to saying the government would decide through the Board of Internal Economy.

I find it very significant that this happened in a period of only three days. I would like to know who made the decision to take away from the Legislature the responsibility to either approve or disapprove of this and give it to the cabinet.

Mr. Wildman: Did Brock Armstrong discuss the change?

Ms. Jacobsen: The terms of this letter were negotiated with Rod Lewis directly with Brock Armstrong. The decision of where it would be taken next were dictated by the House leader's office.

Mr. Wildman: So it is the House leader's office.

Ms. Jacobsen: It was my understanding that it was always Mr. Lewis's understanding that whatever was discussed with him would still have to go to the Board of Internal Economy.

Mr. Philip: That is not what the letter of September 29 says.

Mr. Chairman: Order, please. After my last ruling, Mr. Philip was co-operating very nicely. Then Mr. Mancini started the same sort of questioning and opened the door again. I still think it is appropriate that we listen to the chronology and then have a list of speakers, starting with Mr. Philip. We can deal with all those matters in an equitable fashion within the committee.

Mr. Mancini: I asked one short question on the book; I did not ask a slew of questions.

Mr. Chairman: You are still not dealing with the chronology as I see it. Miss Jacobsen, could you please continue?

Ms. Jacobsen: I will complete the letter.

"During the period you are actively working on your history of the Legislature...you will receive the following additional entitlements: an annual stipend of \$31,500.... In addition, your PSSF pension will be escalated in accordance with the Superannuation Adjustment Benefits Act; office space in room 6520 of the Whitney Block furnished with your existing furniture, together with a secretary and word processing equipment, and use of garage services as currently."

Those were the terms dictated by Brock Armstrong in the letter I delivered to Mr. Armstrong, on the understanding he was going to deliver it to Mr. Lewis and to the other two House leaders.

On October 6, I met with Patrick Fafard of the Board of Internal Economy at his request to clarify some of the technical details of the pension proposal and the financial implications related to that.

On October 7, I received a copy of the formal Board of Internal Economy presentation. I questioned the issue of hospitality and meal allowances, as I had understood that was not part of the negotiated settlement. Mr. Fafard confirmed that it was not recommended as part of the package.

On October 8, I received a copy of Mr. Lewis's resignation and, on October 12, Mr. Carman returned.

Mr. Chairman: That completes the chronology. Are there any additional comments before we open it to questions? Okay. Mr. Philip is first.

Mr. Philip: I want to go back to what appears to be a change of policy. In the September 29 letter, you state that these are some proposals that would have to be accepted by the Legislative Assembly. It is a clear indication to Mr. Lewis that he is not going to get all these goodies unless the Legislative Assembly approves them. Then, as you take off for other responsibilities, a letter goes out under your signature saying it is going to be approved by the Board of Internal Economy.

I recognize that you were busy at the time and that you did not personally sign it, but can you give us any insight into who made that decision? I ask this because that is a major change in direction.

Mr. Carman: The role of the cabinet office in this whole matter was one of facilitating decisions that were made. A decision was made by the House leader. He asked that it be implemented and we facilitated the decision he made.

Mr. Philip: Did Mr. Nixon and his staff decide this was going to be decided by cabinet instead of by the Legislature?

Mr. Carman: It would be more appropriate to address that question to Mr. Nixon.

Mr. Philip: We certainly will.

Would it not be reasonable to say that the House leaders and the Board of Internal Economy were meeting and you were getting vibrations from the two opposition parties that, "Gosh, we feel a little uncomfortable about giving this \$2-million handshake to this man; therefore you are not going to get it

through the Legislature"? Mr. Nixon or someone in his office then decided, "We are not going to get this through the House; it could be a sticky wicket that will stay around for a while, so we will try to get it through the Board of Internal Economy instead." A letter then went out over your name, without your knowledge, promising Mr. Lewis he would get this if it went through the Board of Internal Economy.

Mr. Carman: These questions are much more appropriately addressed to the House leader. Since he made the decision, he should respond on that.

Mr. Philip: Would you consider either of those letters to be a form of covenant, a promise that could be legally binding on someone?

Mr. Carman: To which two letters are you referring?

Mr. Philip: The letters of September 29 and October 1.

Mr. Carman: The September 29 letter certainly is not legally binding. It is merely a letter that provides information.

Mr. Philip: But it is a promise that if a certain group of people approve, he will get this.

Mr. Carman: Just a moment; let me check the September 29 letter.

Mr. Callahan: I am not sure whether Mr. Carman is a lawyer, but surely you are asking him to give a legal opinion. It is unfair to ask him.

Mr. Philip: Mr. Carman is the one who is negotiating. He is the one who is signing the letters. It is perfectly appropriate to ask him.

Mr. Callahan: The letters speak for themselves.

Mr. Carman: May I make it very clear that at no time did I negotiate with Mr. Lewis. I provided Mr. Lewis with information. I did not negotiate with him at all, ever.

Ms. Jacobsen: At the week of the final resolution, I never even met Mr. Lewis in terms of the dealings.

Mr. Philip: I am sure you realize how important these letters were. They were promises that if a certain set of events happened, certain things would occur. Did you get legal advice on the letter you sent on September 29 or was the legal advice open to those who drafted the letter on October 1?

Mr. Carman: I will let Ms. Jacobsen refer to the letter of October 1. I did not get legal advice on the letter of September 29.

Ms. Jacobsen: I did not get legal advice on the terms of the October 1 letter because the terms were specified by the House leader's office. In terms of whether that was binding, I saw the letter as a clarification and a putting in writing of the understanding of the terms. I did not see that I was writing a letter that was legally binding because I always knew it would be up to the House leader's office as to where it went from there.

Mr. Philip: Would you agree that the promise made in the October 1 letter was a stronger promise than the one made in the September 29 letter?

Mr. Carman: I agree with that, certainly.

11:00

Mr. Philip: If I were Mr. Lewis and I said: "Things are improving now. Instead of my having to get this whole matter through the Legislative Assembly, which is a bit of a sticky wicket"--I have a lot of Australian friends here; I like to use terminology they will appreciate--"it is the government that is going to decide."

Interjection.

Mr. Philip: Parliament is international, Mr. Mancini.

Mr. Callahan: I wonder if that question is cricket.

Mr. Carman: You are asking for a legal interpretation of the letter. We could get an answer for you on that, but I am certainly not prepared to attempt that this morning.

Mr. Philip: May I ask you about the September 26 letter to Mr. Lewis? The September 26 letter says that basically one way in which his position as Clerk of the Legislative Assembly could be concluded would be by resignation.

Mr. Carman: That is correct.

Mr. Philip: Can you tell me what he did on July 7 when he stood in the Legislative Assembly and told everybody he was retiring and made public statements that he did not wish to work the long days at his age? What was that if not a resignation?

Mr. Carman: It is inappropriate for me to make a value judgement on what Mr. Lewis did or did not do on--I think it was July 2, Mr. Philip.

Mr. Philip: Okay, July 2.

Mr. Wildman: The announcement of his retirement was made in the House on July 2. Mr. Lewis addressed the House on July 7.

Mr. Carman: I apologize.

Mr. Philip: He resigned in front of I do not know how many million people.

Mr. Callahan: That is a large assumption on your part.

Mr. Carman: When that happened, I thought whatever had taken place in my meeting with him of June 27 had all been resolved. That was my impression, but that was just an assumption I made.

Mr. Philip: Clearly, he did resign publicly on July 7. Then on September 26 he said, "One way of terminating my employment as the Clerk is by resignation." Did it not occur to you at some point to say: "That is fine. We accept that resignation made on July 7 without any of the terms and conditions you are now asking for after that resignation"?

Mr. Carman: Once again, it seems to me in the period I was dealing

with this particular matter, that question was one that I assumed the House leaders would deal with when they considered the matter following the meeting of September 24. As I said, I was only playing a role of facilitating whatever the Legislative Assembly did, if the executive was required to facilitate anything, and therefore that is a question that appropriately would have gone to those particular gentlemen as they considered that question.

Mr. Philip: To your knowledge, did they consider that question?

Mr. Carman: I am not aware of what happened following the meeting of September 24. I have no idea whether the House leaders met again before Mr. Nixon left for the Far East.

Mr. Philip: Perhaps you can tell me in layman's language, how can a person resign and then negotiate the terms of the resignation he has made several months before? Is that too simplistic? How do you negotiate something that is concluded? On July 2 or July 7, either date, when he resigned, to your knowledge there were no terms or agreements similar to those requested in his letter of September 26. Is that correct?

Mr. Carman: That is quite correct. As of either July 2 or July 7, there were no negotiations in any of the conversations I had with Mr. Lewis and, therefore, there was no agreement on any conditions. All I had indicated to him was that an annuity could be purchased to solve his pension fund.

Mr. Philip: Subject to approval by the Legislature.

Mr. Carman: That was subject to approval by the Board of Internal Economy.

Mr. Philip: Later, then, you said it was subject to the Legislature.

Mr. Carman: That is quite correct. Following the meeting of September 24, the House leaders decided they wanted to make this what I term a Legislative Assembly matter.

Mr. Philip: To make it perfectly clear, to your knowledge, on July 7 or on July 2, but more particularly on July 7 when Mr. Lewis resigned publicly, Mr. Lewis did not have either any written promises or any verbal promises concerning any of the matters contained in this letter of September 26?

Mr. Carman: I should clarify. He had no promises from me. Whether Mr. Lewis had promises from anyone else can only be determined by asking other people. I was not aware of any promises that had been made.

Mr. Philip: Can you point to any correspondence between you and him or any other correspondence you are aware of that would indicate there were promises, either verbal or written, made to Mr. Lewis prior to July 2 or July 7 when he made public his resignation?

Mr. Carman: There was no correspondence in that period from me at all, just those two informal meetings.

Mr. Philip: Are you aware of anything subsequent to July 7, indicating that promises had been made prior to July 7?

Mr. Carman: No. As you will recall, in one letter I wrote on

September 29, I say: "You indicate that certain promises were made to you earlier. The only area which I was asked to work on in order to resolve an inequity was your pension entitlement." What I was trying to indicate was that I was unaware of any promises.

Mr. Philip: Can we talk about the Legislative Assembly Act for a minute and your understanding of what exactly happens under that? Under the Legislative Assembly Act, the appointment of the position of the Clerk is made by the Lieutenant Governor in Council. The incumbent holds the office during good behaviour but may be removed from office by the Lieutenant Governor in Council for cause on the address of the Legislative Assembly.

I am sure you have read the Hansard from the time that was debated. From reading that Hansard, is it your understanding that this is a lifelong appointment?

Mr. Carman: May I read from Graham Stoodley's legal opinion? "Subsection 74(1) of the Legislative Assembly Act now provides that the Clerk of the Legislative Assembly is to be appointed by the Lieutenant Governor in Council. Subsection 74(2) provides that the Clerk is appointed 'during good behaviour' and may be removed by the Lieutenant Governor only on the address of the assembly. In effect, the Clerk is appointed for life in the same way that judges used to be appointed, and he cannot be removed from office except by a vote of the assembly."

Mr. Philip: The change from being the Clerk of the Legislative Assembly to not being the Clerk of the Legislative Assembly would be by resignation, by death or by the Legislative Assembly deciding that he should be removed for cause.

Mr. Carman: That is quite correct.

11:10

Mr. Philip: Do you not agree that on July 7 he met one of those conditions when he resigned publicly?

Mr. Callahan: That is a judgement call, and I think it is unfair to ask this man to answer that question. That is a judgement call, perhaps even a legal opinion.

Mr. Chairman: Mr. Carman is quite capable of dealing with such a question. He has been around here for a while.

Mr. Carman: I am being asked to make a value judgement about what happened on July 7. That could be more appropriately done by someone who has a legal background and who is asked to study it from that standpoint.

Mr. Philip: But you are the one writing back and forth to him. What is the purpose of your correspondence, if the man has already resigned?

Mr. Carman: At the meeting of the House leaders, they had not made the assumption that he had resigned. They wanted to look at his package.

Mr. Philip: But they did not make the assumption that they promised him any particular size of package.

Mr. Carman: That is quite correct, Mr. Philip.

Mr. Philip: Is it not reasonable when somebody resigns that you can say, "We had better see what is owed to the person," without saying, "We are going to give him a lot more than he has coming to him"? Is there not a distinction in that?

Mr. Carman: In my presence the House leaders discussed at length the fact that they considered the total request was somewhat greater than they would eventually approve. They wanted to consider the matter and make a decision.

Mr. Philip: It was in the nature of a charitable consideration rather than something they felt they had an obligation to pay him.

Mr. Carman: Again, I am being asked to make a value judgement of what was in the minds of the House leaders. I cannot know what motivated their decision.

Mr. Callahan: Good faith.

Mr. Philip: It is very expensive faith. I am sure the pensioners in Ontario who get less in a whole year than Mr. Lewis would have been given in a month by this agreement wish they had some good faith in the government along these lines.

Because of your long association in your position, I wonder if you can tell us a little bit about the conditions. I am sure you will agree that it is not only what goes into an act that is important, but also a court will look at what was said at the time a piece of legislation was passed and the intention in the minds of the legislators. Do you not agree when you read the Hansard that the intention in the mind of the legislators at that time--and I do not have the section but I will be glad to look it up--was to make it analogous to the position of the Provincial Auditor?

Mr. Carman: Without examining the legislation that the Provincial Auditor has to govern his position and comparing it with this legislation, it is impossible to make a comment on that.

Mr. Philip: If you check the Hansard, and I will find the appropriate section, comments were made that the intention at the time was to make the appointment of the Clerk in a manner similar to the Provincial Auditor, and then we find a very short time later that the Audit Act comes in. Can you tell us what was in the minds of the people at that time or what was in the Audit Act in terms of the length of the appointment of the Provincial Auditor?

Mr. Carman: The matter of what was in people's minds in terms of developing the acts to govern the Clerk and to govern the Provincial Auditor were matters in which I was not deeply involved at that time. I would be speculating completely to guess what was in their minds.

Mr. Philip: It is not speculation to read Hansard and see what people said at the time, sir. It is not speculation to see that at the time the new Legislative Assembly Act was passed the debates clearly show it was in the minds of the legislators that the Clerk was going to get an appointment similar to what was going into the Audit Act and that the Audit Act would appoint the Provincial Auditor for a period that would end at a certain period and fix a time according to his longevity.

Mr. Carman: What the intention was and what finally happened may have been two different things. A court of law would find for what is in the act, not for what the intent of the legislators was.

Mr. Philip: Do you not agree that what has happened in the Legislative Assembly Act was that there was an intent to make the Clerk of the House different from most other crown employees who are at the pleasure of Her Majesty, period, and change it more towards the kind of system that would exist in private enterprise where there would be an onus of some cause and, therefore, if an inappropriate cause, some compensation for wrongful dismissal?

Mr. Carman: I am not sure that I got the entire import of that question, but let me deal with the question of the right of a crown employee for dismissal for cause. Clearly, a crown employee has a right of expectation of some kind of severance arrangement if the dismissal is not for cause. If the dismissal is for cause, even there, depending on the view of the court and depending on the degree of cause, one can go all the way from a zero payment to some kind of payment that is a reflection of what is called in the trade "constructive dismissal." I am not sure that the question of how this relates to the private sector more than to the public sector applies. Perhaps I have missed something, Mr. Philip.

Mr. Philip: What I am saying is unless there is a specific clause written into the orders in council or some other document at the appointment of a crown employee, he is at the pleasure of Her Majesty. In this case, there was a clause written in that said he would be more analogous to a private sector person who could sue for wrongful dismissal if he had an invalid cause for dismissal.

Mr. Carman: My understanding of the legal opinion that was given by Graham Stoodley is quite different from the entitlement a person has in the private sector. This is a job for life. There is no one in the private sector, that I am aware of, who has a job for life.

Mr. Philip: Where does it say in the Legislative Assembly Act that it is a job for life?

Mr. Carman: The legal opinion that we received says, in effect, the Clerk is appointed for life in the same way judges used to be appointed. That is quite different than any arrangement in the private sector.

Mr. Philip: Yes, and we will hear some quite different legal opinions by people who are experts in this field on that matter.

If there was an ability to dismiss someone for cause, does it not seem to you that a just cause would be that of a man who writes to you after making a public resignation on July 7 and says: "Although I resigned, I want this extra set of goodies. If I do not get it, I am not moving out of my office. You have appointed a new Clerk, and things are going to be very difficult for that new Clerk with me around." Does that not seem to you, as a layman, to be cause for dismissal?

11:20

Mr. Mancini: On a point of order, Mr. Chairman: These types of questions probably should be directed to the government House leader and others. I do not know why it is necessary to have one of our committee members badger Mr. Carman--

Mr. Callahan: For an hour and 15 minutes.

Mr. Mancini:--for about an hour on subject matters he cannot answer. Mr. Carman has come here today before the committee. He has given us the scenario, which is what we originally asked for, and I do not think we should badger a civil servant who is just trying to do his job.

Mr. Chairman: That is a valid point, Mr. Mancini. In terms of the questioning, Mr. Philip, you have been on somewhat more than half an hour. We have two other questioners, and I urge you, in the interests of fair play if nothing else, to--

Mr. Philip: In the interests of fair play then, I ask that all the documents referred to by Mr. Carman be distributed to the committee and that we have those prior to questioning our next witness. If the clerk could arrange that, I would appreciate it.

Mr. Chairman: All right.

Mr. Pope: I have two questions. Why?

Mr. Carman: I am sorry. Why what? Excuse me, I do not understand the context of the question.

Mr. Callahan: Yours are too short and Mr. Philip's are too long. It is impossible to answer any of them.

Mr. Pope: Why were the negotiations started in the first place? Why was the decision made to get Mr. Lewis out?

Mr. Carman: The Premier had a discussion with Mr. Lewis, and I was asked to undertake certain activities relative to that discussion. Why the Premier made that decision is a question one would have to ask the Premier.

Mr. Pope: Were you part of the discussions when that decision was arrived at?

Mr. Carman: No, I was not.

Mr. Pope: Were you informed of that decision when you attended the first meeting with Mr. Lewis?

Mr. Carman: I was first informed of the decision, as I recall it, after Mr. Lewis and the Premier met. They met alone.

Mr. Pope: Were you aware of any incapacity or report of any incapacity of Mr. Lewis that would affect his performance of his duties?

Mr. Carman: In my duties, I do not have a great involvement with the Clerk of the House. Therefore, I am in no position to make an assessment one way or the other.

Mr. Pope: I did not ask that. I did not ask you to make an assessment. I asked if you were aware or made aware of any incapacity.

Mr. Carman: No, I do not think I was.

Mr. Wildman: I too have only a couple of short questions. In regard to the book or books, did you have any indication from Mr. Nixon or his staff or the House leaders about who, if anyone, would monitor Mr. Lewis when he was "actively working" on his book?

Mr. Carman: My assumption was that once this matter was concluded and the actual arrangements were put into effect, someone within the executive would meet with Mr. Lewis, develop a work plan and understand what was going to be accomplished by when. That is our normal approach to these things.

Apparently, the initial manuscript is to be available soon. Flowing out of that is the question I asked earlier, "Is the initial manuscript something members of the assembly might want to see repackaged in other ways or to have something developed from?" That would all flow from a conclusion of arrangements. Because the arrangements are not concluded, those conversations have not taken place.

Mr. Wildman: Is this the same book referred to in the clipping I have before me from the Toronto Telegram for Saturday, January 22, 1966?

Mr. Chairman: Excuse me. I have a couple of things here. We have too many conversations going; we cannot hear the witnesses. Mr. Wildman, can you direct your comments to the microphone, please?

Mr. Wildman: Is the same book referred to in this clipping of the Toronto Telegram of Saturday, January 22, 1966?

Mr. Carman: I am not aware that the Toronto Telegram referred to any work that was being done.

Mr. Wildman: This article states, "Mr. Lewis is working on a new version"--that is, a version of his father's book--"in his spare time and hopes to have it ready by centennial year."

At that time, Mr. Lewis was predicting that he would have his book done in approximately one year's time. I understand that in discussions with you he indicated that it was about three quarters finished. The reason I am raising this is that if we anticipate the same kind of time frame, we may have a situation where Mr. Lewis is actively working on his book for life. We may be looking at the year 2006, when we may anticipate that if Mr. Lewis is still in good health, he will still be working on his book.

Mr. Philip: What age will he be in 2006?

Mr. Wildman: What bothers me is whether this idea of providing a salary to Mr. Lewis while he was working on his book was another way of increasing his pension for life.

Mr. Carman: I would like to clarify that at no time was there a suggestion in my discussions with Mr. Lewis that he was to be provided with a salary while working on a book. Furthermore, as I said earlier, the whole question of what was to be accomplished and in what period was to be worked out with Mr. Lewis once the matter of his pension and other arrangements had been finalized.

I think one should review the other book--whatever book it is--that is currently three quarters complete to determine what has been accomplished and then, once one has done that, make a decision about what is to be accomplished

next and in what time frame and in essence create a work program with Mr. Lewis, so that one has a clear understanding of what is happening in the next stages. I want to make it quite clear that there was no suggestion that Mr. Lewis receive a salary in return for writing a book.

Mr. Wildman: At the time of the Telegram article, it was clearly envisioned that Mr. Lewis would retire before the Telegram retired.

Mr. Chairman: You have only a couple of minutes.

Mr. Callahan: You have been around here a long time. Has there ever been a book of this type written? I presume this book is going to be the question of how the House--

Mr. Wildman: Mr. Lewis's father--

Mr. Callahan: In recent times, has there been a book other than, say, Commonwealth accounts of Legislatures?

Mr. Carman: The book Mr. Lewis is writing, as he described it to me, will be of interest to members of the Legislature because he intends to take situations from the time he was Clerk, describe what happened in the situations and then indicate the kind of lessons for legislative procedure and involvement of members that flow from those items. That was his indication to me. If that book meets those objectives, then it would be of some interest to new members of the House as they join the Legislature.

11:30

Mr. Callahan: That was my reason for asking the question. Has it been done before, outside of Canada and in other Commonwealth countries?

Mr. Carman: I am not aware this has been done for the Ontario Legislature recently.

Mr. Wildman: It is my understanding that Mr. Lewis's father's book was written in 1939. In this article, which I find very interesting, Mr. Lewis says he has become fascinated with parliamentary procedure, and when he gets time he is intent on bringing out a second edition of his father's book. That was in 1966. He was predicting it was going to be completed in the year after that, in centennial year.

In fact, for whatever reasons, Mr. Lewis has not completed that work, and he has indicated he is now almost three quarters finished. At that time, he indicated he was almost finished. My question is how anyone who is involved in the discussions with Mr. Lewis knows he is almost finished and that it is not going to be another 10 or 20 years before he completes his book.

Mr. Carman: The purpose of the discussion with him is to examine the manuscript that has already been completed, determine what remains to be done and get some indication of when that is going to be accomplished. It is my understanding from the informal discussion I had with him that the completion of the book he is currently working on is described as being in a matter of weeks and months, not a matter of years.

Mr. Wildman: Well, okay, but in 1966 he thought it was a matter of months too.

Mr. Carman: All I can indicate is that I would be happy to come back

after this matter is resolved and after someone from the executive has had an opportunity to meet with Mr. Lewis, to give the public accounts committee an update on that work program, so you will know just where this matter stands.

Mr. Chairman: You have mentioned a couple of times that Mr. Lewis has a job for life, in Graham Stoodley's legal opinion. I want to emphasize that in my view it is not, as I appreciate it, a job for life in the truest sense, because of, as you mentioned, the ultimate right of the Legislature to dismiss the Clerk. I gather there is no precedent for that, but in any event it is there and stands there, so there is no real ironclad guarantee in respect of the Clerk's employment. That should be emphasized.

Mr. Carman: That is quite correct. If, for some reason, the Clerk's behaviour is unacceptable to members of the assembly, then that is a matter of cause.

Mr. Chairman: It would be a nasty exercise for everyone, but that option is there.

Mr. Callahan: There has been a great deal of levity about this book being written, but this man did serve a considerable time in the Legislature. Whatever value you make of his service, I think that would be of some significant interest, certainly to people such as myself who are freshmen in the Legislature and to those who will follow.

I would like to go back to some of the statements Mr. Philip was making about what was going on. As I recall, Mr. Lewis made his farewell speech to the Legislature just before we recessed for the summer. Is that right?

Mr. Wildman: It was July 7.

Mr. Callahan: It was probably the last opportunity, prior to the new session commencing--I cannot recall when we did recommence. That is correct, is it not?

Mr. Carman: We recommenced after his resignation, which was October 8. As I recall, the House started October 14.

Mr. Callahan: In fairness, the House leaders were discussing in good faith the question of dealing with this man in a fair way. Mr. Philip seems to present the position that because Mr. Lewis resigned, you do not continue discussions about whether you treat him fairly. I do not think that is the case at all. Is that basically the feeling you got? We were trying to be fair with the man after he had addressed the Legislature and said goodbye.

Mr. Carman: Again, any comment from me as to the interpretation of those events is really not appropriate.

Mr. Philip: I hope when I retire somebody treats me fairly in that way.

Mr. Callahan: Goodbye.

Mr. Philip: I wish some of my retired senior citizens would get that kind of fair treatment from the government.

Mr. Chairman: Anything else from members of the committee? Thank you, Mr. Carman and Ms. Jacobsen. The clerk would like to get those pieces of correspondence from you.

Mr. Carman: May I leave my file with the clerk and ask that it be returned at the convenience of the committee?

Mr. Philip: We are not going to get to Mr. Sorbara.

Mr. Chairman: Apparently, Mr. Sorbara is on the way here.

Interjection: He is here.

Mr. Chairman: He is here already. We should take advantage of the opportunity to have Mr. Sorbara for the remainder of the session or until the bells ring. Would you come forward please?

Mr. Philip: Under a notice of motion, we have to vote on the motion of last time.

Mr. Chairman: I indicated at the outset that if there is a division and we have to go to the House, we will be coming back here and dealing with your notice of motion. We will not adjourn until 12:30. That is the usual adjournment time for the committee. Mr. Sorbara has been on hold for some time. It would be inappropriate not to hear him this morning.

Welcome. Have you any opening comments you would like to make?

Hon. Mr. Sorbara: No. I do not have any particular opening comments. Perhaps we ought to proceed to questions.

Mr. Philip: I am always pleased to welcome a \$10-million minister.

You were quoted as saying it would cost the taxpayers \$10 million if they did not go ahead with this enormous package to Mr. Lewis. Was that your own legal advice? On whose legal advice did you get the information that if Mr. Lewis sued he would obtain \$10 million?

Hon. Mr. Sorbara: Let me start off by saying that I was misquoted when I said it would be a \$10-million settlement. What I did say, and I reiterate it to Mr. Philip, is that although the demands that were being made were generous in the extreme, it was my personal view that any other approach to the retirement would be even more expensive. Then I said, "I do not know; \$3 million, \$4 million, \$5 million. I do not know."

Mr. Philip: Are you saying you did not use the figure of \$10 million?

Hon. Mr. Sorbara: I recall Ross McClellan making a big deal about, "Sorbara says it would cost \$10 million." It is simply inaccurate.

Mr. Philip: You are saying you were misquoted.

Hon. Mr. Sorbara: I am saying I was misquoted.

Mr. Philip: You are saying that you never used the figure of \$10 million.

Hon. Mr. Sorbara: I think my exact words were that any other approach to resolving this issue, in my personal view, having assessed the situation, would be more expensive. Then I said, "I do not know; \$3 million, \$4 million, \$5 million, maybe \$10 million. I do not know."

Mr. Philip: So you did say \$10 million.

Hon. Mr. Sorbara: I may have; I do not know. I did not record myself when I made that comment. I recall ending the phrase with, "I do not know."

Mr. Philip: Did you have a legal opinion, other than your own, that it would cost this much?

Hon. Mr. Sorbara: Mr. Chairman, I reiterate to my friend that I was not expressing a legal opinion. I was commenting on my view, having been involved in the situation and having reviewed the details, that although the settlement was an extremely generous one, based on very stringent demands, any other approach would be more expensive.

Mr. Philip: You are a member of the cabinet. Would the cabinet not have legal advice on this matter?

Hon. Mr. Sorbara: I am not prepared to discuss in this committee what is discussed in cabinet. The answer is yes. I am a member of cabinet.

Mr. Philip: Was the advice you gave legal advice? Was the comment you made from a legal source other than yourself as a lawyer?

Hon. Mr. Sorbara: That was based on all the information and all my familiarity with the situation at the time I made the comment.

11:40

Mr. Philip: As part of that information, was there a legal opinion other than your own on which you suggested it could cost \$5 million, \$6 million, \$8 million, \$10 million?

Hon. Mr. Sorbara: If we want to play with figures, \$20 million. I did not personally commission nor have a commissioned legal opinion when I made that comment.

Mr. Philip: Did the House leader or any other person in cabinet or any other persons around you commission the legal opinion on which your statement had any basis?

Hon. Mr. Sorbara: You will have to ask the House leader whether he commissioned--

Mr. Philip: No, sir. You made the statement of \$10 million; I am asking you. Did you base your statement on any legal advice other than your own?

Hon. Mr. Sorbara: I based my statement on all the advice and all the information I had on the matter at the time I made the statement.

Mr. Philip: As part of the advice, was there a legal opinion other than your own?

Hon. Mr. Sorbara: Part of it was the legal review of the annuity that Mr. Carman referred to earlier in these hearings.

Mr. Philip: What legal review. The review that was tabled in the House?

Hon. Mr. Sorbara: Graham Stoodley.

Mr. Philip: It was on that legal review that you came up with the \$10-million figure.

Hon. Mr. Sorbara: Once again--I have to reiterate, because I think we are getting stuck on an off-the-cuff comment--the substance of it was that, in my view, as a member of the Board of Internal Economy and having reviewed the documentation presented there, the demands were generous in the extreme, but any other approach would have been more expensive to the government. That is the substance of the comment, not the \$10 million. I am trying to explain that to the member, and if he wants to continue to ask--

Mr. Philip: You came out of the Board of Internal Economy, you were confronted or asked questions by the press and you gave a figure that it would cost the taxpayers a very large, sizeable amount if they did not go along with the proposal you made to the Board of Internal Economy. Was there a legal opinion other than your own presented to the Board of Internal Economy on which you made that decision?

Hon. Mr. Sorbara: No. There was no legal opinion presented to the Board of Internal Economy. There was documentation and a recommendation from the staff of the Board of Internal Economy that set out the provisions of the payments and annuities that would be provided for Mr. Lewis upon his retirement.

Mr. Callahan: Can I ask a supplementary on that?

You were aware that he had what in Graham Stoodley's opinion was a lifetime appointment. Actuarially, the question of what a court might determine to be his lifetime is, in a sense, a pretty difficult decision for a judge, really.

Hon. Mr. Sorbara: Sure.

Mr. Wilman: Particularly when you are 75.

Hon. Mr. Sorbara: That opinion refers to a lifetime appointment. My own personal assessment--again, this is a personal assessment, having read the act and evaluated it based on my own legal background--was that Mr. Lewis's appointment was as secure as it could be for life, short of enshrining his appointment in the Constitution. I think it was that strong, if you read the legislation.

Mr. Philip: Are you giving us--

Hon. Mr. Sorbara: Just hold on a second. Let me finish my answer.

First, you require an address of the assembly; second, the assembly's address is valid only if cause is determined; and, third, you require the concurrence of cabinet.

I do not know what more you could do to secure an appointment, other than to place it in the Constitution, which would require the address of two thirds of the provinces having 66 per cent of the population.

Mr. Callahan: In essence, a judge, in trying to interpret how much that was worth, whether it was wrongful dismissal and breach of contract--

Mr. Philip: I did not say that--

Mr. Chairman: I agree with Mr. Philip on this. You had your supplementary. Mr. Philip.

Mr. Philip: In fact, you came out of that Board of Internal Economy and you gave a personal opinion as a lawyer and as a cabinet minister. It was your opinion and not any other legal opinion. Is that not correct?

Hon. Mr. Sorbara: I came out of the meeting of the Board of Internal Economy and reported the decision. I was asked what I thought about the settlement and I said that it was extremely generous, but under the circumstances it was fair and that any other kind of approach would have been more expensive, in my view.

Mr. Philip: All right. It was your view. It was not a view based on any other legal opinion.

Hon. Mr. Sorbara: It was in my view as a member of the government, as a member of the Board of Internal Economy.

Mr. Philip: Can you tell us your qualifications as a labour-management lawyer? Did you practise that type of law while you were practising as a lawyer?

Hon. Mr. Sorbara: No. I practised in an environment with labour lawyers.

Mr. Philip: Essentially, you came out of the Board of Internal Economy with a very large figure that grabbed all the headlines and you suggested that no alternative course of action could have been made without costing the taxpayers an awful lot of money. You based that on no legal opinion other than your own, and your own legal experience is not in this field of law. Do you consider that responsible?

Hon. Mr. Sorbara: If you are questioning my competence to act as a member of the Board of Internal Economy, that is your right. I could question your competence to act as a legislator. Every time a bill is presented in the Legislature, do you have to show your credentials to support your views, your speeches and your comments outside of the House? No. You are a qualified legislator. I am a qualified member of the Board of Internal Economy. I expressed a view after the decision. I supported the decision. I moved the motion. Full stop.

Mr. Philip: You are more than a member of the Legislature. You are a member of cabinet representing the taxpayers on the Board of Internal Economy. You came out and made a statement that it would cost the taxpayers up to \$10 million if they went the route the Conservative and NDP members on that board had voted for, but had lost. Do you consider that a responsible statement as a cabinet minister?

Hon. Mr. Sorbara: The Conservative and NDP members on that board did not propose or move any other solution. They expressed their opinion. I think they are perfectly free to do that. As a legislator, as a member of cabinet and as a member of the Board of Internal Economy, I have not only a right but also a responsibility to express my views to the public.

I do not know why Mr. Philip is so hung up on the fact that I expressed

a personal view subsequent to the decision, but it is your committee, if you want to let him proceed.

Mr. Philip: I have no problem with you expressing a personal view. I am just saying that personal view or that figure, more particularly, was irresponsible on your part. I am asking you the basis of your \$10-million figure.

Hon. Mr. Sorbara: I think some of the statements you have made as a legislator are irresponsible, but that is for the public to decide.

Mr. Philip: No doubt the public will decide in this case.

Hon. Mr. Sorbara: I am sure it will.

Mr. Philip: Admitting, then, that you have no experience in labour law, from your readings in the literature--

Hon. Mr. Sorbara: I did not say that.

Mr. Callahan: That was not what he said, Mr. Philip. If you would listen instead of talking, you would understand what he said.

Mr. Chairman: Order, please.

Mr. Callahan: He did not say that, with all due respect. He went on to say that he worked in an environment with lawyers who dealt in that area.

Mr. Philip: I am sorry, Mr. Callahan. I do listen. In fact, I listen so well that in 11 years in the Legislature I have never asked the Attorney General whether he had introduced some legislation when he had introduced it the day before. That is how well I listen.

Mr. Callahan: That just goes to show my questions are not canned.

Mr. Chairman: Let us have some order. We have a witness before us. Let us not waste our time with this type of--

Mr. Philip: I have not made a fool of myself the way you did.

Mr. Wildman: Excuse me, Mr. Chairman, I think things are degenerating somewhat.

Hon. Mr. Sorbara: It was so calm before I came in. What happened?

Interjection.

Hon. Mr. Sorbara: I was invited.

Mr. Philip: From your review of the literature, can you tell us the largest settlement for wrongful dismissal that you know of?

Hon. Mr. Sorbara: Given that these are public hearings, I do not want to give a legal opinion in the context of this committee, not having done appropriate research, but if you just asked me based on casual acquaintance without doing any homework, I would say two or three years' salary where someone's position does not have a lifetime guarantee to it.

Most employment contracts are time specific. If they are not time specific, the court will determine an appropriate length of time. Generally, it would interpret a contract being a year-to-year contract, and in some instances month to month, but in other instances the court will determine that an employment contract, in the absence of a specific, would be on a week-to-week basis. That is for the court to decide.

However, I do not know of any court decision that has dealt with an employment contract that provides the only means of removal is by an address of the assembly for cause and an order in council before the Lieutenant Governor.

You are trying to get me to express a legal opinion in one context that simply does not apply to another context.

11:50

Mr. Philip: You said two to three years. Can you name any settlement in Ontario that was given as more than two years?

Hon. Mr. Sorbara: I am not that familiar with the case law, but I do not think case law would be applicable to the current circumstances.

Mr. Philip: I think, sir, if you did review--and I am sure you have done some homework in preparation for this--you would have to admit that there is no settlement over two years.

Hon. Mr. Sorbara: Frankly, the case law in the area of wrongful dismissal is in a great state of flux. It is developing dramatically. It would be presumptuous of me to suggest to you what a court might do in any particular circumstance.

Mr. Philip: It was not presumptuous of you, sir, to mention \$10 million. You did not think that was beyond your presumption. You told the taxpayers it would cost them up to \$10 million if they did not take a certain course of action and that they would be sued for that.

Hon. Mr. Sorbara: Once again, the substance of my statement was that in my view any alternative course would have been more expensive. If Mr. Philip wants somehow to get me to admit that I had no legal basis or authority to quote the figure of \$10 million--which, frankly, I do not think I ever said, but it may well be. I know Ross McClellan has said it on numerous occasions.

Mr. Wildman: He got it from the press.

Mr. Philip: Ross McClellan can read the newspapers, the same as I can. You are saying it would cost more than the present settlement. Is that your present position?

Hon. Mr. Sorbara: In my estimation, based on the information I had and on our discussions within the Board of Internal Economy, any other course would have been more expensive than the settlement that was provided.

Mr. Philip: Can we be specific about that? Therefore, "more than" would mean that it would cost more than \$2 million.

Hon. Mr. Sorbara: It would cost more than the proposal being

submitted. The reason I say this is that one would expect that a lifetime contract would provide for a salary for life. You might say the court would provide for the settlement that the litigant might otherwise have received. However, when you contemplate that kind of action, you would also get a substantial claim for pain and suffering, embarrassment and the humiliation of going through the process. There would also be a claim for costs. All those would be added to the kind of settlement that would provide for the continuing remuneration at the level that has been provided for in a contract for life guaranteed in every way except constitutionally. That was the basis upon which I suggested that any other course would be more expensive.

Some claims for pain and suffering, humiliation and embarrassment are very substantial and some awards are very substantial. In this situation, if a court determined that Mr. Lewis had suffered great embarrassment and humiliation in the latter days of his life, a court might be very generous. That is the basis of my evaluation of the situation. I might be wrong. I am not the judge. I was expressing a personal opinion and I was exercising my legislative responsibilities in the Board of Internal Economy.

Mr. Philip: I find it very significant that in looking at the factors a judge would consider you neglected to name the major factor the judges historically have considered in wrongful dismissal cases; namely, the effect on the person's future career. What future career do you think Roderick Lewis had if he had been able to prove--

Mr. Callahan: He had the right to receive his annual stipend for the rest of his life.

Mr. Philip: If I want to ask you questions, I will ask you questions. If you will kind enough to keep your mouth shut, you will get your chance.

Mr. Callahan: I am sorry. Thank you, Mr. Chairman.

Hon. Mr. Sorbara: There is a sense of hostility growing here and I think I am the cause of it.

Mr. Callahan: No, you are not.

Hon. Mr. Sorbara: It was so calm here. I was watching you and you were so calm.

Mr. Philip: Mr. Sorbara, I have a much higher respect for you than for the member towards whom I just directed my vindictiveness.

Hon. Mr. Sorbara: I am not sure whether you are a lawyer, but as a lawyer I would speculate and prepare the case based not on precedent in wrongful dismissal but on the legislative provision. I do not know of anyone else in our society, other than the Queen--not the position of Lieutenant Governor because it is a five-year stint--who has that legislative provision guaranteeing employment except under certain circumstances. As a lawyer, I would have prepared the case solely on that and I would have argued strenuously to reject all other precedents based on normal wrongful dismissal cases.

There is one more thing I should point out in this context. There was the suggestion that Mr. Lewis had retired on July 7, but if you read Hansard, he did not retire at all. What did he say? He said that he was moving forward and was looking forward to his new responsibilities. That is all he said.

Mr. Philip: He said he could no longer fulfil his responsibilities and that he wanted a shorter work day.

Hon. Mr. Sorbara: "Seventy-five is a good, round figure. I came to the conclusion that it was time to step forward to something different with less exacting hours, giving me a little more time to be with my wife...." It does not say he has now retired. He says he has the intention of entering into an agreement to move on to a new position.

Mr. Philip: Where does it say new position?

Hon. Mr. Sorbara: "...Step forward to something different with less exacting hours...."

Mr. Philip: Does that not sound like every retirement speech you have ever heard from anyone, from a janitor or cleaning person to the president of a company? They are all going to step forward into the future to do new things.

Hon. Mr. Sorbara: That may well be.

Mr. Philip: Is that not a rhetorical statement rather than a legal statement?

Hon. Mr. Sorbara: My reading of it was that it was very carefully crafted.

Mr. Philip: Is there any evidence you can point out that before either July 2 or July 7, there were any promises made to Mr. Lewis for anything that was in the package he asked for in his letter of September 26?

Hon. Mr. Sorbara: No.

Mr. Philip: In the absence of that, how can you assume--as you are assuming by that quote--that he had a specific position in mind that he was going to retire to, rather than simply stating that he was retiring from a position and looking forward to doing exciting things that other retirees do, such as writing memoirs and books and perhaps even going to Florida?

Hon. Mr. Sorbara: Sorry, but I did not quite follow the question. I do not have the gist of the question.

Mr. Philip: You do not know of any agreement or promises made to Mr. Lewis before his speech of July 7.

Hon. Mr. Sorbara: That is right.

Mr. Philip: In the absence of any of those promises, how can you conclude from his retirement statement that he is referring to anything related whatsoever to government?

Hon. Mr. Sorbara: I was not privy to discussions that took place prior to the statement. I understand and was advised of the very extensive negotiations that went on subsequent to the statement, and I can tell you no more. Once again, I am not sure what you are getting at. I am sorry if I am missing something.

Mr. Philip: You are suggesting he was retiring to a government position of some sort.

Hon. Mr. Sorbara: No. In response to your suggestion that Mr. Lewis had retired on July 7, my suggestion would be that although he indicated an intention to move on, it was clearly subject to working out arrangements for the appropriate context to which he would be moving on and how that would be funded.

Mr. Philip: Show me something in that statement that suggests there are arrangements or negotiations understood by both sides. Point out to me any sentence that he has given in Hansard that suggests any such agreements were in the offing.

Hon. Mr. Sorbara: I quote from the next paragraph: "I am glad the government House leader has asked me to stay in the service of the province in a consultative and advisory capacity and to write." That indicates to me there was work to be done in settling (a) the terms and conditions of his future role, and (b) the price, exorbitant as it was, to secure his written resignation from the post of Clerk, moving into the post of Clerk Emeritus.

Mr. Philip: I do not see anything there about price.

Hon. Mr. Sorbara: Perhaps that is because you do not have any sense of how, in legal terms, these things arise.

Mr. Philip: I have a sense of what happened in the House of Commons with Stanley Knowles. He receives no salary other than his pension and he acts in a consultative process with the Speaker of the House of Commons.

Hon. Mr. Sorbara: I can conceive of a situation where Roderick Lewis might have agreed to a more modest and appropriate package, but the fact is that was not the case. His demands were clear, unequivocal and in the main the price of submitting his resignation and bringing his term of office to an end.

Mr. Philip: I suggest those sentences contain no promise and no guarantee.

Mr. Gillies: Mr. Sorbara just used the term "Clerk Emeritus" that I have heard and I am wondering where it originated. Do you recall who first used that term? In your view, does it constitute a title to which one would assume a job description would be attached or is it just a term of respect for a senior and valued colleague who is retiring? I wonder which it is.

Hon. Mr. Sorbara: There may be an element of both. Clearly, the terms of the package provide that Mr. Lewis will carry on doing certain things. One wants to give a title to various things, to name things, and I think Clerk Emeritus is as appropriate as any. He could be Clerk Emeritus and do nothing and just be known as Clerk Emeritus, just as some people get honorary degrees.

Mr. Wildman: And not be paid.

Mr. Chairman: We are required to break the meeting. We will reconvene following the vote and, I hope, deal with Mr. Philip's notice of motion. That is the intent.

Hon. Mr. Sorbara: Am I done?

Mr. Chairman: Mr. Sorbara, we will have to arrange another suitable time for you and your staff.

Hon. Mr. Sorbara: I would not miss it for the world.

The committee recessed at 12:03 p.m.

12:27

Mr. Chairman: We have seven minutes.

Mr. Philip moves that the Provincial Auditor request Dr. Podrebarac, Deputy Minister of Management Board of Cabinet, to supply forthwith information requested by Mr. Philip and that this information include all contracts, agreements, settlements and terms of settlement and the sign-off letters that were given to the following people:

Bernard Reynolds of Algonquin Forestry Authority; Bradford Bowlby of the Assessment Review Board; Hugh MacKenzie of the Health Disciplines Board; those officers of IDEA Corp. who are no longer in the employ of the crown; John Biddell of the Inflation Restraint Board; Willis Blair of the Liquor Licence Board of Ontario; James N. Allan of the Niagara Parks Commission; any executive officers of the Ontario Centre for Advanced Manufacturing; V.E. Oechsle of the Ontario Centre for Automotive Parts and Technology; Gordon Gow of the Ontario Centre for Microelectronics; G. W. Bell of the Ontario Centre for Resource Machinery; Thomas Courchene and Peter Jackman of the Ontario Economic Council; W. Edwin Jarman of the Ontario Energy Corp.; Allan R. Moses of the Ontario Housing Corp.; Kenneth Littzen of the Ontario International Corp.; and Donald J. MacLean of the Ontario Lottery Corp.

Mr. Philip: In moving that as a notice of motion last week, I indicated I believe the public has a right to know when their tax money is being spent to wave goodbye to certain high-level executive officers of the crown. That right to know takes a high priority over any other kind of obligation. I am concerned that with a number of these people the government has apparently entered into agreements of secrecy in making the arrangements for their premature retirement or displacement to other positions, wherever they may be. As the standing committee on public accounts, which is responsible for looking at the effective use of the taxpayers' money, we have an obligation to see exactly what settlements were reached and to make comments on them.

We have already learned from the Urban Transportation Development Corp. that Kirk Foley received more than \$350,000, plus he has been hired back as a consultant by the very corporation he was paid to leave. We found that \$3.5 million has been paid by that one corporation alone to say goodbye to its employees. We have the matter of Mr. Lewis's platinum handshake by the Liberal government.

Mr. Chairman: May I interject at this stage? We have only a couple of minutes left, and Mr. Mancini has indicated there is going to be support for this. I am wondering about the time constraints.

Mr. Philip: I appreciate the support. I was hoping we would have the documents. Mr. Podrebarac has indicated at all times that he is not giving a definitive refusal but was seeking a legal opinion from the Ministry of the Attorney General. However, during consultation with his office this morning, he conceded he did have a legal opinion but "had not read it yet" and therefore could not release the documents. I am hoping these documents will be released voluntarily, but I hope perhaps the Provincial Auditor might care to carry on the negotiations with Mr. Podrebarac and the Liberal government, since so far I have been unsuccessful in obtaining these documents.

Mr. Mancini: As we indicated last week when we asked for a notice of motion, we wish to support the motion as put forward today. The only thing I would ask, and I am going to leave it up to the judgement of the committee, is that before we make anything public, the subcommittee review in camera the material gathered by the auditor, his opinions, etc. There may be something you might not want to have tabled for someone's protection. I do not know why, but there could be a reason. Therefore, the only thing I would ask is that the subcommittee take a few moments to review the work of the auditor before it finally decides that it is going to table all this information at the next meeting.

Mr. Chairman: That sounds reasonable. Mr. Archer, do you agree?

Mr. Philip: I would simply amend it to say "on the auditor's advice." If the auditor receives the information, he will review it.

Mr. Mancini: But members may have some reason--

Mr. Philip: He can advise the subcommittee, which, in turn, can make the decision and a proposal to the committee. It is far more independent if the auditor examines it.

Mr. Chairman: We have about 30 seconds. Mr. Archer, do you want to comment?

Mr. Archer: We would have no difficulty trying to fulfil the motion as it is written. The only point I would raise is that I am not too sure that Dr. Podrebarac would have the information relevant to all of these settlements. Some of them involve agencies and the documentation may be with a particular agency. However, we will attempt to get it from whatever source necessary.

Mr. Philip: That was the intention of my motion.

Mr. Chairman: Fine. I guess we are all in concurrence with this.

There is one final thing I want to run by the committee. We indicated to the Office of the Premier the process under which we would study the Premier's travel records. There has been no objection expressed from the Premier's office with respect to that. On behalf of the committee, I would like to request that those records be made available to the subcommittee. They have not been looked at for more than two years.

Mr. Wildman: I so move.

Mr. Chairman: Are we in agreement with that?

Mr. Philip: On one other matter, since I have been part of the negotiations, I know for a fact that at least members of the Conservative Party are now in agreement with some changes that we have made to our 20 points in my motion concerning the Industrial Accident Prevention Association. I am wondering whether we could schedule that for a vote. It could be included in our report if it is passed.

Mr. Chairman: We are going to have to have a subcommittee meeting next week because there are so many items that have to be resolved. We will deal with it at that time. I will ask the clerk to put it on the agenda.

Mr. Wildman: At that subcommittee meeting, do you intend to look at matters we wish to raise from the most recent auditor's report?

Mr. Chairman: Yes.

Mr. Wildman: Therefore, members should submit matters to their respective members of the subcommittee.

Mr. Chairman: That is right, to their respective caucus members serving on the subcommittee.

The committee adjourned at 12:35 p.m.

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Publication

STANDING COMMITTEE ON PUBLIC ACCOUNTS

SUBCOMMITTEE REPORT
RETIREMENT OF CLERK

THURSDAY, DECEMBER 4, 1986



STANDING COMMITTEE ON PUBLIC ACCOUNTS

CHAIRMAN: Runciman, R. W. (Leeds PC)

VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)

Barlow, W. W. (Cambridge PC)

Callahan, R. V. (Brampton L)

Davis, W. C. (Scarborough Centre PC)

Epp, H. A. (Waterloo North L)

Mancini, R. (Essex South L)

Philip, E. T. (Etobicoke NDP)

Pope, A. W. (Cochrane South PC)

Smith, D. W. (Lambton L)

Wildman, B. (Algoma NDP)

Clerk: Arnott, D.

Staff:

Fritz, H., Research Officer, Legislative Research Service

Witnesses:

From the Office of the Provincial Auditor:

Sciarra, J., Administrative Assistant

From Harris Partners:

Harris, D., Lawyer

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PUBLIC ACCOUNTS

Thursday, December 4, 1986

The committee met at 10:08 a.m. in room 151.

Mr. Chairman: We will come to order and get under way at close to our scheduled time for a change. Before we deal with the agenda, I want to make the members aware that I received a letter from the Office of the Premier in respect to my request for travel records. This is from a Mrs. Sorbara, indicating the absence of Gordon Ashworth until Monday, December 8, 1986. She will apprise him of the request and he will be contacting me directly. I have nothing further to report on that. I do not want to presume that we are going to have any difficulty securing those records.

SUBCOMMITTEE REPORT

Moving on to the agenda, do you all have a copy of the report of the subcommittee? We can either deal with these individually or deal with the report with one motion.

Mr. Wildman: I have a question. As I look at the list of priorities from the new, recently tabled report, I have no objections to the list you have here. However, I hope that does not--

Mr. Chairman: It is not all inclusive.

Mr. Wildman: Exactly. I just want to let you know that I am particularly interested in dealing with the section of the report, and I cannot remember the number, that dealt with public health agencies. Do you know what number it was?

Mr. Sciarra: Item 4.6.

Mr. Chairman: I should apprise the committee that we felt we should be making some recommendations. The Provincial Auditor is also going to be preparing a list for us of unsatisfactory responses, if you will, from the ministries in the areas he continues to have concern about. The subcommittee will be looking at his priorities.

Mr. Wildman: Without wanting to be partisan, there was a question raised in regard to that item and we already have an unsatisfactory response.

Mr. Philip: I realize it was difficult, considering where we had the meeting, to get everything down, but I thought we had agreed one of our other priorities that would be high on the agenda along with the annual report of the Provincial Auditor was the convert-to-rent program. That is a high priority. We moved that it be dealt with. I raised it at the subcommittee meeting. Somehow, it is not included on the list.

Mr. Chairman: My recollection is that it is a separate item we are going to be dealing with and will be scheduling time for. It was not included as part of this area because it is already a scheduled matter for this committee to deal with.

Mr. Philip: You are saying we will deal with that prior to the Provincial Auditor's report. That was my understanding and I wondered why it was not on the agenda.

Mr. Pope: By adoption of this report, is Mr. Mancini's motion being consumed by the report of the subcommittee?

Mr. Chairman: It was the intent of the subcommittee that it would be responding and dealing with Mr. Mancini--

Mr. Pope: Mr. Mancini may be withdrawing his motion as well as a result of the adoption of this.

Mr. Chairman: He is not here to--

Mr. Pope: In that event, I would like to comment on this subcommittee report, presuming Mr. Mancini may withdraw his motion as a result of the adoption of the subcommittee report.

Mr. Wildman: That would be reasonable.

Mr. Pope: I have some comments to make.

Mr. Chairman: This is based on the assumption he is going to withdraw his motion.

Mr. Pope: Yes, and that I will not have a right to address it. The matter has already been publicly discussed and I think I have a right to have my say in the matter. I want to start by saying that I do not--

Mr. Chairman: Will you wait for a couple of minutes?

Mr. Callahan: Here is Mr. Mancini.

Mr. Mancini: I was here right at 10 o'clock.

Mr. Pope: The subcommittee is the single page in front of us. The first item addresses your concern in the motion you brought. I was asking whether I could address my comments to this subcommittee report, presuming that you may withdraw your motion based on the fact that poor control over movable assets is the number one item. Maybe you could tell us now.

Mr. Mancini: Poor control over movable assets and asking for what I would like, is that the same thing?

Mr. Chairman: The auditor's references, which I believe you wanted to see placed on our agenda. The subcommittee has in essence agreed with your concern that it is a priority item for this committee to deal with.

Mr. Pope: That is my understanding.

Mr. Mancini: It sounds good to me.

Mr. Pope: I want to comment on the report of the subcommittee. I will be very brief. As far as I am concerned, neither Mr. Mancini nor anyone else in this committee had any intent to personalize the matter when it was raised. I know that for a fact. It was genuine concern over one of the recommendations of the auditor's report that I happen to agree with. The

matter should be looked at. I am speaking in support of the adoption of the report of the subcommittee.

This is the third time in the past 18 months that this government has used its powers for the purpose of an attack on a critic of the government, an opposition member. It shows a predisposition towards political espionage that has not been seen in North America since the darkest days of Richard Nixon.

Mr. Callahan: Or McCarthy.

Mr. Pope: I specifically point out the actions of the Ministry of Natural Resources last year in pre-releasing the Provincial Auditor's report as it applied to the Ministry of Natural Resources one week before the Progressive Conservative leadership convention for the specific intent of attacking myself as an opposition member and a leadership candidate. I cite that as a specific example. It was not followed by any other ministry and it was not done again this year by the Ministry of Natural Resources or any other ministry. It was straight politics on the part of the Minister of Natural Resources with the advice and consent of his cabinet colleagues to try to use the powers of government and to abuse the process of the Provincial Auditor's report for partisan political purposes.

Second, the same Minister of Natural Resources over a year ago sent audit teams to private tree nurseries in northern Ontario to review their financial circumstances. I had two calls from private auditors whom I had never met or talked to before. Both said that the government was really trying to find out whether or not there had been any payments made to me as Minister of Natural Resources in exchange for those contracts. They found nothing. There was nothing to find.

Third, the Office of the Premier is the source of the release of information concerning office furnishings with respect to myself and Susan Fish. It was from the Premier's office with the knowledge and consent of the Premier. The pre-release of this inaccurate information and its use in a context was nothing more than a partisan attack on two opposition critics to this Liberal government. It is a clear abuse of the political processes and the government powers by the Liberal Party of this province.

I also refer the members to the attempts by the Liberal Party and the government to attack Phil Gillies with respect to certain land matters in Brantford. That was inaccurate and unfair as well, but it was attempted by the Liberal Party. These matters have to be put into this context.

When the transition came, all the furnishings in my office were tagged by the Ministry of Government Services; every single thing. They were tagged and kept by the Ministry of Government Services. I had a roaring fight for two weeks to try to keep the late John Rhodes's desk and bring it into my MPP's office. I ended up getting the minister to agree to allow me to keep John Rhodes's desk and bring it to my MPP's office. We had a second fight with respect to a picture of Winston Churchill in a frame that I wanted to keep. I was ordered by the Ministry of Government Services to return it to the Ministry of Natural Resources, which I did. That indicates the kind of detail the Ministry of Government Services went to regarding the furnishings of my office. They tagged everything. They got everything. I am told by government sources that they are satisfied and it is in their inventory list.

The members of the opposition deserve better treatment than they are getting from the Premier's office of this province. If he wants to abuse his

Premier's powers for political espionage, then the people of this province ought to know that this is a government of corruption and decadence that is willing to abuse its powers in this way.

From the asides by the Attorney General (Mr. Scott) in the Legislature yesterday, he knows of these matters and therefore was either informed of them or involved in them. That says something about the Attorney General as well. Members of this Legislature and the public deserve to know what kind of government is being run in this province by David Peterson.

Mr. Mancini: The members will know that I spent some time in the auditor's lockup and asked some questions of the staff people.

Mr. Philip: A little bit louder, please.

Mr. Mancini: As I was going over the pages of the auditor's report, I came upon pages 31 and 32 where he stated some concern about assets that were no longer in place or could no longer be found. It was on that basis that I moved the motion without any instructions from any of my colleagues or anyone else and only with the assistance of the Liberal members' research bureau, which is about half the size of the opposition research bureau since we implemented all those new rules to make sure the opposition members have as much staff available to them--

10:20

Mr. Wildman: The ministers all have their own research--

Mr. Mancini: I understand. I do not know about Mr. Pope's particulars. He has described what he feels the situation is pertaining to himself. My motion was in no way directed to any one member, as he acknowledged, but only to the fact that the Provincial Auditor, not the government, stated these things were missing. The subcommittee in its wisdom decided this should be the first priority on the agenda we have in front of us today.

Our government has not been all that bad to the opposition members. One only has to walk through the north wing and take a look at the way the offices are structured and furnished today and compare it to the situation that was in place 24 months ago.

Mr. Wildman: That is true.

Mr. Mancini: If there was ever a rat's nest in this building in the way offices were constructed and treated and the way furniture was allocated, my colleague behind me would agree--

Mr. Wildman: I agree with you.

Mr. Mancini: We got absolutely zero consideration from anyone. Even our chairman was appalled by the situation that pertained to opposition members about 24 months ago. Just by chance, I took a walk through those offices last week and found that the walls have been painted, new carpeting has been put in and brass lamps are all over the place. That is fine. Members should have decent offices.

Mr. Wildman: That is how it should be. It should have been like that years ago.

Mr. Mancini: It should have been like that years ago. If anyone says that the government has a plan to mistreat the opposition members, what has taken place over the past 18 months will disprove that.

Mr. Callahan: There has been benevolence.

Mr. Wildman: It is wonderful what minority government can achieve.

Mr. Mancini: I do not know why there was an audit on certain items discussed earlier. Perhaps someone else can answer those questions. I do not know why some information was released on Mr. Pope prior to the leadership convention. Someone else has to answer those questions.

I want to deal with--I see the committee has this on its agenda today--poor control over moveable assets. I would like a further in-depth review by the auditor. He reviewed 240 pieces of equipment. Of those, 60 were missing, which is a full 30 per cent. A full 30 per cent of items attached to minister's offices somehow disappeared through the transition of government. That is what I am interested in. I am sorry if anything happened to Mr. Pope that was unfair, but that is not what is at issue today. At issue today is that 30 per cent of the items documented by the auditor--not by the Premier's office, not by the Liberal members, but by the auditor--are missing.

Mr. Wildman: I want to respond to part of Mr. Pope's concerns. I have some sympathy with his frustration. However, I regret his intemperate language in accusing other members of the House or the government of political espionage. I wonder whether some of the comments made by Mr. Pope were in order. They seem to be imputing motives. I do not know whether you should have allowed those comments to be made.

Mr. Mancini: We have a thick skin.

Mr. Wildman: I did not want to raise a point of order and interrupt him in his presentation.

I want to respond to a couple of comments he made with regard to the history of some of the work of this committee. First, it is a little strange to be upset about partisanship on the part of the government. We are all politicians and we are all partisan. We should not be making any apologies for it.

Particularly with regard to the nurseries, though, I want to emphasize that the question of the awarding of contracts for private nurseries by the Ministry of Natural Resources was a priority for me, this committee and the Provincial Auditor. I moved the motion in this committee that it be investigated, that the Provincial Auditor was looking into it and that it was a matter of concern for me.

The report that came out and the response of the government to the report indicated some of those concerns were well founded.

Mr. Pope: I am not saying that.

Mr. Wildman: With regard to the minister's release of part of it prior to the convention, Mr. Kerrio has to answer for that, for the reasons

for that release, but we should all recognize that part of the game around here is to try to make political points.

The responsibility of this committee is to attempt to ensure the protection of the public purse and that when expenditures are made they are made properly, fairly, with good purpose and with good results. The subcommittee is quite correct in accepting that this suggestion, poor control over movable assets, is a legitimate concern, particularly as a result of the auditor's comments, and that we should be looking into it.

I support them in that and I do not think it can be seen as any kind of political espionage or attempt to smear, if we move in that regard. I do not think Mr. Mancini can be accused of that either. Mr. Mancini's comments about the improvements to individual members' offices are well taken. It was long overdue. Those assets now in those offices, whether they be computer terminals, televisions or pieces of furniture must be kept track of. We, as members of the House elected to responsibilities, must ensure that when and if people are moved around offices, we do not lose those assets.

For those reasons, we should be looking into this. I support the subcommittee.

Mr. Callahan: Lose the odd member, but not assets.

Mr. Chairman: Mr. Pope, I will give you another opportunity to make some comments.

Mr. Pope: He said I made comments about the Provincial Auditor's work. With respect I did not, nor did I make comments about individual members of this committee.

I am supporting the subcommittee report. It was not the Provincial Auditor's study of the tree nursery. It was a private audit by the Ministry of Natural Resources.

Mr. Chairman: All right. You will have an opportunity to say that. Order, please.

Mr. Callahan: Yes. We started off on a bad note this morning, but I agree with Mr. Wildman that the purpose of this committee is to address the concerns of the Provincial Auditor.

As a new member around here, when I was first elected, I was moved to three offices. Furniture was all over the halls. I began to wonder whether I would not like to have the moving contracts in this place. In some respects, I suspect if the same thing was happening in other areas--and I did not go over to the Whitney Block or any of the other blocks--one may very well find a lot of this stuff has sort of wound up in the wrong place as a result of the moving. It looked like Ed's Warehouse, if you will pardon the expression, Ed. When I went downstairs, I would constantly bump into furniture.

Mr. Philip: You have never seen my warehouse or you would know that there was no disorganization equalling that of my warehouse anywhere in the Legislative Building.

Mr. Callahan: However, in fairness to all parties, the dramatic change that had taken place after 42 years and the incidents leading up to it resulted in a number of us being moved from office to office. I had not yet

got my fingerprints on the desk and I was being carried out to another office.

10:30

I agree with you, Mr. Wildman, that we are all politicians, but we should also remember the fact that we are all honourable members, and until there is definitive evidence from the auditor that misappropriation has taken place, we have to work on the basis that we are all honourable members.

Mr. Wildman: Exactly.

Mr. Callahan: I hope if this type of move ever occurs again, which we hope will not happen, it will be possible to do it under less rushed circumstances.

You have to recognize as well that the current government had to form a transition team to move smoothly into government. The team did a significant job in that respect, but at the same time, you have all the nitty-gritty of people moving from one office to another and all the follow-ups that meant furniture being transported here, there and everywhere. A lot of this stuff was left by the doors. Ed's Warehouse does not deal in furniture. However, anyone could have helped himself. We should get at the root of it and we should determine a way these assets can be protected and kept track of.

In the United States, they put chains on the articles in the stores. I hope we will never reach that stage, but we have to give the benefit of the doubt to the fact that this may very well have resulted from the significant moves that took place. We should not immediately attempt to zero in on the fact that any one of the members of this Legislature may be dishonest or may have done something inappropriate.

Mr. Wildman: In the next move, when we move into government, we will ensure we will not lose anything.

Mr. Philip: I am pleased to hear Mr. Callahan's statement because it contrasts significantly with what Mr. Mancini is saying. I do not think any member of this committee, the Conservatives included, have in any way objected to an inquiry into where the furniture went. What I find offensive is that "an anonymous source" in the Liberal Party has somehow given information of which we have no facts and condemned in the media two members of the committee. I find it offensive.

I would find it as offensive if they were Liberals. It happens they are Conservatives, but I find it offensive. As far as anything I have ever seen of Mr. Pope or Susan Fish, we may disagree on policy items, but I never found anything to suggest they are in any way dishonest or any of the implications contained in the broadcast are true.

This committee should say in no uncertain terms that we uphold the integrity of the two members and that we are upset that somehow someone has given unsubstantiated information about two members of this committee and that it has maligned the characters of the two members about whom we have no evidence to suggest they are anything other than honourable members.

Mr. Chairman: Before you speak, Mr. Pope, Mr. Wildman raised a concern about some of the highly descriptive language you are using and the clerk concurs with Mr. Wildman's concerns about those particular references.

At this stage, I am simply going to urge you to take that into consideration in your comments.

Mr. Pope: For the record, I withdraw anything you find offensive in review of the transcript.

Mr. Callahan: The jury will be instructed to disregard those statements.

Mr. Wildman: Disregard any comments about Richard Nixon.

Mr. Gillies: I am sorry I was not here. I am usually a model of good temper.

Mr. Pope: To be more precise and to help Mr. Wildman, I have no objections whatsoever to the Provincial Auditor reviewing anything I was ever involved in during my time as a minister. It is proper and I have no objection to this committee dealing with it. My concern with the Provincial Auditor's work last year was the pre-release of the portion that applied to the Ministry of Natural Resources and the timing of the pre-release.

Second, on the point of the private tree nurseries, I was not talking about the activities of the Provincial Auditor. He has a mandate and a role to do whatever he is directed to do or whatever he feels he should be doing with respect to government auditing. I would never attack that role. I am talking about an audit done by the Ministry of Natural Resources and the kinds of questions that were asked of private businessmen in northern Ontario.

Quite frankly, I understood your concern from the very beginning when you raised the Wawa tree nursery issue. It was legitimate and that is why I came before the committee and tried to answer questions.

Third, I was not talking about the auditor's recommendations with respect to the movable assets, I was talking about a story on the CBC last Thursday night that alleged impropriety on the part of Ms. Fish and myself. That is the only context of my comments; there is nothing more to it.

Mr. Chairman: We have two other items on this subcommittee report. We can either deal with it in one vote or, as I mentioned earlier, with three separate votes. I prefer to do it with one. Mr. Gillies, do you want to make any comments on number two?

Mr. Gilies: Yes, I would briefly. It is the subcommittee's feeling, and it is certainly one with which I concur, that in terms of the audit of individuals surrounding the whole Wyda matter, with the complexity and recent events that seem to be overtaking that--

Mr. Callahan: Are you on homes for the aged?

Mr. Chairman: We are talking about the audit of the individual companies.

Mr. Gillies: The point I was going to make is actually in agreement with Mr. Philip's motion. I believe we have gone as far as we can with the matter of auditing individuals and companies surrounding the Wyda affair, with the receiver having moved in and with the lack of co-operation forthcoming from that company with regard to the request of the standing committee on public accounts. With the work load and the number of matters this committee

has before it in the weeks to come, my feeling, and I think it was shared by members of the subcommittee, is that we could really spend the rest of the year on nothing but Wyda and the whole darned mess surrounding it.

Mr. Wildman: We might get a trip to Israel out of this.

Mr. Gillies: We might.

I am just not sure we have the time or the resources to devote to this that it deserves. My feeling, as expressed upstairs in the chamber, is that there are enough questionable matters surrounding this that the appropriate action now would be for the government to initiate a public inquiry under a justice with the power to subpoena witnesses and call for the production of documents persons and things to try to get to the bottom of just how the public's \$3.5 million has been used in this matter.

I really do not think our committee can devote either the time or the resources necessary to do this. I think it is time for a public inquiry. I certainly support the subcommittee's recommendation that we pursue this matter no further, but that this committee endorse a motion asking the matter be referred to an inquiry.

Mr. Chairman: We are going to be dealing with Mr. Pope's notice later. I would like to confine our remarks to the subcommittee's report and recommendations, get that off our plate and then deal with Mr. Philip's matter.

Mr. Philip: Stemming out of the subcommittee report, I will be moving today a notice of motion that reads as follows:

"Whereas Wyda--

Mr. Chairman: We are not going to allow the reading at this point. You are going to be giving notice a little earlier. I want you to confine yourself and your remarks to this recommendation and not reading a motion that you are going to me making a little later on in the morning.

Mr. Philip: With respect, you allowed Mr. Gillies to paraphrase my motion; now you are saying that I cannot read my motion. I find that blatantly unfair. The easiest way of dealing with number two is to deal with my motion now because it incorporates the ideas--

Mr. Chairman: I am not going to allow it. If the committee wants to overrule me on this, fine and dandy, but I am not going to do it. We deviate and I throw quite a bit of latitude in the deliberations of this committee as it is. I am not going to allow you to get into a notice of motion during the debate on the subcommittee report. That is the way it is.

10:40

Mr. Philip: I agree with the subcommittee's recommendation, for the simple reason that we have seen the loss of \$3 million. We have seen that more than \$2 million at least of the \$3 million was used to pay off debts rather than applied for research and development, which was the intent of IDEA Corp. We have seen that major debts belonging to Abraham Dobzinski and Budgrove Inc. were paid. We have seen that \$30,000 was paid to Ivan Fleischmann's company.

IDEA Corp. stated that if it had known that, it certainly would not have approved it.

Mr. Chairman: Pardon me. I am having trouble identifying the direction in which you are going in your remarks with the committee's recommendation not to pursue the audits of the three individual companies any further. We should be confining our remarks to whether or not we should be continuing the audits. Then let us move on to these other matters.

Mr. Philip: What I am trying to do, Mr. Chairman, and I thought you would recognize this, is to show the enormous problem we were faced with and the enormous complexity of the problem.

Mr. Chairman: I think all members of the committee are fully cognizant of the facts in respect to that.

Mr. Callahan: He is trying to increase our ratings; that is what he is trying to do.

Mr. Philip: Therefore, it seems unreasonable for this committee to be able to handle this. We have been obstructed, as has the Provincial Auditor, from getting any of the information from Wyda, Mr. Dobzinski and the other officers of the company that we require to answer any of the questions we found significant. Therefore, it seems unreasonable that we pursue it any further.

We have a large agenda before us, and one must ask whether there is a better way of dealing with this. As the New Democrats and the Conservatives have said in the House, we feel the appropriate forum or avenue to deal with this would be a judicial inquiry and not the standing committee on public accounts. Therefore, I would ask all members of the committee to concur with item 2.

Mr. Chairman: Are there any further comments on that item?

Mr. Pope: It is unfortunate that this committee and the Provincial Auditor were systematically frustrated in trying to get to the truth. I know we want to get on, so I will be very brief. I just bring back to your recollections the fact that numerous times, from the very beginning of the hearings, I raised objections that we were being given information that someone else determined was relevant. We were being asked to accept at face value certain documents and pieces of information without being given the opportunity to get behind them in an open and free way to find out what was going on.

I do not know the specific date, but I believe it was in late August or early September, we asked in camera for a forensic audit. It was unanimous. There was a unanimous resolution in camera in late August or early September to have a forensic audit not only of Wyda but also Mr. Dobzinski, Mr. Caplan, Damaza, Mr. Fleischmann, Canadian Intercorp. We named them all.

We were concerned about the kind of information we were getting and about all the payments that went out, including \$1.5 million in 11 days to pay off debts. As well, we were concerned about the sudden revelation that came in the second appearance of Mr. Logan that there had been a breakfast meeting on April 10, in which the deal was restructured without the consent of the board. The deal closed nine days later.

Ontario Development Corp. first said it would have an audit done of

Wyda. That was its first stage. We waited four weeks. They then came in with the accounting firm and said they did not do an audit; they did a financial review. They did not audit; they did not go behind the paper. They just listed the debts.

We told them that was unacceptable. We called publicly for a forensic audit of the same individuals and companies. We were then told we could not get the funding for that audit from the Ontario Development Corp. We would have to go to the Board of Internal Economy to get money to do a forensic audit to try to get to the truth as to where this money went and whether these debts that were being paid were legitimate. We then saw the ODC come back and say, "We will try to negotiate the terms of an audit by the Provincial Auditor." We then had four to six weeks of negotiation of the terms.

In the meantime, everyone has picked up, taken their records and off they go. We now have a receiver appointed only for Wyda. That is the only process that has been started. There is nothing with respect to Canadian InterCorp, Mr. Fleischmann, Damaza, Wilf Caplan and Avi Dobzinski personally. We have a very incomplete response.

I agree it is a complex matter. I agree perhaps a forensic audit is now too late. I appreciate the efforts of the Provincial Auditor in meeting with the steering committee and trying to get this matter going. Somehow, in some forum, someone should have the right to get a full and complete accounting of the \$3 million of the public's money and we will do it some way, but I agree with Mr. Philip, whose notice of motion we support, that it now appears to have gone beyond the scope of this committee and into other forums. Perhaps we should have our point of view expressed in those forums.

Mr. Chairman: Is there anything further? Okay. We will move on to the final recommendation, which is procedure of the committee. That was at the request of the chairman to have something accepted by the committee with respect to a procedure to deal with one or more members monopolizing debates, so that I have some direction from the committee in having the power to move on to other speakers.

Mr. Wildman: I agree with the intention of this. However, I would like to see it 20 minutes rather than a half hour per round. Your earlier attempt in the committee to limit debate per round, to ensure rotation and then to get people back on the list if they had further things they wanted to raise, was very good. Other members of the committee will agree with my view that your chairmanship of the committee on that basis was very effective and has helped the committee to be more effective in its work. While I agree with the intent of this proposal from the subcommittee, I would rather see it at 20 minutes than a half hour.

Mr. Chairman: I would remind members that the 20 minutes was agreed to in the Caplan hearings and it was agreed to by the committee, providing me with some support.

Mr. Wildman: Yes, and it worked very well.

Mr. Mancini: I would like to endorse your proposal and agree with Mr. Wildman that 20 minutes would be better than 30 minutes. That way we could have a proper rotation. If someone does not use his time, we could easily fall back on the next person who wishes to speak.

Mr. Wildman: That is fine.

Mr. Philip: I would like to disagree with Mr. Wildman.

Mr. Callahan: I thought you might.

Mr. Philip: The matters before this committee are often fairly complex. Sometimes it takes more than 20 minutes to develop a trend of questioning. The half hour limit allows everybody to participate in an average morning on the committee. Half an hour is more reasonable. There is nothing worse than having somebody cut off right as he is leading to key points.

Some people we have appearing before the committee, remember, are reluctant witnesses and can spend an awful lot of time talking about the weather or any other thing they want to talk about to use up time, particularly if somebody is starting to ask questions that are probing and tough. To have that questioning cut off in 20 minutes is a little premature. I would vote for the recommendation of the subcommittee.

Mr. Callahan: Briefly on that issue, I am sure this committee would probably agree to extend the time if the person was being relevant throughout the discussion as opposed to starting out with--

Mr. Philip: Oh, come on.

Mr. Wildman: Alan, Ed and I all got cut off during the Caplan thing on a number of occasions, but we lived with it.

Mr. Callahan: It is fair to all members in that it gives each of them an opportunity to have a say. I would support the motion of the subcommittee.

10:50

Mr. Chairman: The clerk points out something. During the Caplan matter we did not have the provision for unanimous consent to extend, which we have incorporated in this recommendation. There is a real flow there and no one has any objection to the--

Interjections.

Mr. Chairman: The government is crumbling under some of this questioning and the government members are less likely to give unanimous consent.

Mr. Davis: I want to concur with Mr. Philip that half an hour will--

Mr. Mancini: Just because you are a minister--you cannot get anything in less than 30 minutes.

Mr. Davis: I do not know any politician who could answer a question or speak in less than 30 minutes either.

Mr. Pope: Speak for yourself.

Mr. Davis: Except for you, Alan.

Mr. Callahan: If that politician happens to be a lawyer as well, you are really in trouble.

Mr. Davis: I think 30 minutes does allow someone to develop a theory and bring it to a conclusion.

Mr. Philip: Why do we not take a straw vote?

Mr. Davis: I think the 20 minutes is fairly short.

Mr. Pope: Let us get on with it.

Mr. Chairman: Let us see. We have suggestions of 20 minutes here. We should have a motion to amend it if that is the wish of the committee.

Mr. Mancini: I will move the motion to amend it from 30 minutes to 20 minutes and we keep the provision for unanimous consent in the motion.

Mr. Chairman: We have a motion from Mr. Mancini. Are there any comments? Those in favour? Opposed? The amendment is carried.

Motion agreed to.

Mr. Philip: The same old gang.

Mr. D. W. Smith: No, I do not think so.

Mr. Chairman: Could we have a motion to accept the report of the subcommittee as amended?

Mr. Pope: I will move it. Would it be okay if I move it because I am happy that we are looking at the last sentence?

Mr. Chairman: Okay. Moved by Mr. Pope. Those in favour? Carried.

Motion agreed to.

Mr. Chairman: I have a request from Mr. Philip that we deviate somewhat from our agenda. As you see, item 2 is retirement of the Clerk. He has made a request, and I am going to ask the committee for consent to concur with his request, that he now give his notice of motion which has been circulated to everyone. Do we have agreement?

Mr. Mancini: Is there anyone present who is waiting to get on for item 2? Is there anybody here?

Mr. Philip: I prefer not to speak to it. I will simply move it.

Mr. Chairman: It is Mr. Philip's motion.

Mr. Mancini: May I speak to it?

Mr. Chairman: All right.

Mr. Callahan: Do we have unanimous consent to move this as written, to save some time?

Mr. Philip: I do not think the first part has to be read in. I will read it quickly.

Mr. Wildman: It just has to be in the form of a motion. We are dealing with it next week.

Mr. Chairman: We are in agreement with Mr. Philip reading it in and that is the end of it.

Mr. Philip: I moves that whereas Wyda Systems Inc. received a \$3-million investment from IDEA Corp. last year;

Whereas evidence during this committee's investigation indicated more than \$2 million of the \$3 million was used to pay off debts instead of being applied to research and development;

Whereas the debts included \$462,000 to Abraham Dobzinski and \$585,000 to Budgrove Inc.;

Whereas \$30,000 was paid to Canada InterCorp Ltd., a firm belonging to a self-confessed Liberal lobbyist Ivan Fleischmann;

Whereas on April 17, 1986, Wyda issued a cheque to Abraham Dobzinski in the amount of \$3,451,922 presumably to reimbursement for retirement of a long-term indebtedness of his company;

And whereas neither the committee nor the auditor of Ontario has received an explanation that would justify the complexity or reconcile the accounting for;

Whereas the committee has very important matters on its agenda;

I move that the chairman of the committee report to the Legislature that the committee is not in a position to investigate further this complex matter and it is the position of the committee that a judicial inquiry be initiated forthwith into this matter.

Mr. Chairman: That will be on our agenda for next week.

RETIREMENT OF CLERK

Mr. Chairman: We are moving on to item 2 on the agenda, the retirement of the Clerk. Mr. Harris, could you come forward, please?

Mr. Harris: Where would you like me, Mr. Chairman?

Mr. Chairman: Right there. That is fine. Welcome to the committee, Mr. Harris.

Mr. Harris: Thank you.

Mr. Chairman: We appreciate you taking time out of what we know is a very busy schedule to appear before us. Do you have anything you would like to say at the outset before we get into some questions?

Mr. Harris: I do not really know what my purpose is here. I gather it is to comment on how an equivalent person in the private sector may be treated. Is that the object?

Mr. Chairman: Basically, it is about wrongful dismissal and your experiences with wrongful dismissal suits.

Mr. Harris: I should give you some background first. My practice is restricted to the practice of employment litigation dealing with people who

have been terminated, or advising companies on terminations in the private sector and to some extent the public sector as well.

I have written a text on the subject of wrongful dismissal. I am editor-in-chief of the reporting service called the Canadian Cases on Employment Law that is distributed to lawyers across the country. My practice is restricted to employment law.

Mr. Chairman: Thank you very much.

Mr. Philip: We appreciate your coming here, because some of us have read your text, or large sections of your text, and also some of your other publications. We note that, although you might not want to admit it, you certainly are seen in the legal profession as the authority in the field of wrongful dismissal.

In your practice, would you give us the criteria that a judge would use in deciding the size of a settlement that might be given to a person who successfully proves he has been wrongfully dismissed?

Mr. Harris: The usual consideration is, first, is there any type of employment contract that the parties have signed. Presuming there is no employment contract, our civil courts imply into the employment relationship an obligation on the part of the employer to give reasonable notice to terminate that relationship. The issue then becomes the quantification, first, of the notice period.

Traditionally, a court looks at factors such as the length of service of the employee with the company, the position held, the responsibilities of the position and the age of the individual, perhaps as to whether the individual was recruited affirmatively by the employer to leave previous employment and whether there is any detrimental reliance upon representations made as to the nature of the relationship at the outset. Those are typically the factors that a court would look at in assessing, first, what is the length of the notice period to which the employee is entitled.

The maximum notice awarded to date in an Ontario court is 21 months. There have been higher notice awards in other jurisdictions in Canada, but in Ontario, to date, it is 21 months.

Mr. Philip: In going through the lists you have turned out, the lists of settlements for wrongful dismissal, and in looking at those that are between 12 months and 21 months, which are the larger settlements, would it be safe to say that those people are aged somewhere between 40 and 55?

Mr. Harris: Typically, the highest settlements are for individuals who probably are between 50 and 65 and have had a long length of service and a substantive position, such as chief executive officer, executive vice-president or something of that nature.

Mr. Philip: To your knowledge, are there any cases of successful wrongful dismissal settlements for people over the age of 65?

Mr. Harris: The issue right now is a complex one. There are two issues in terms of dealing with someone who is over 65. The first issue is our Employment Standards Act, which sets down provincial minimum criteria that have to be met, which, as you know, are regarded as a statutory minimum. Our Employment Standards Act denies the entitlement to a severance payment to an

individual who is over 65 years of age. There is an issue currently as to whether that is a violation of the charter and that has not been resolved.

Our courts in Ontario have not dealt with that issue as to what is the impact of turning age 65 upon the assessment of notice; there are no decided authorities on the subject. My personal assessment--and it is only a personal point of view--is that the passing of age 65, barring a contract to the contrary, does not disentitle someone to a notice entitlement.

The factors to look at are whether there is a pension plan that comes into play at age 65 and whether it may be presumed that creates a contractual agreement to retire at 65.

11:00

Mr. Philip: In the case of using the criterion of age 65, would one of the considerations or arguments be that at age 65 the person's future career or earnings are not likely to be affected by the dismissal? In other words, if I am 55 and I am the president of General Motors, my chance of picking up another position with equal prestige or equal salary is fairly limited. At age 65, it would be presumed that I probably would not be looking for another presidency.

Mr. Harris: There are a lot of factors that come into play. In response to your question, the first question is whether you are anticipating a person actually retiring or being told to retire at age 65. Is that what you mean?

Mr. Philip: Yes.

Mr. Harris: The first issue would be, is there a contract that the individual is bound to adhere to, agreeing to retire at age 65. Presuming that does not exist, the second issue is, is the person entitled to notice. The purpose of notice is to allow the person to find alternative employment. My own assessment is that, barring that contract issue, the passing of 65 still entitles the person to a notice consideration. The issue to be resolved is, what is the impact of turning 65 upon the quantification of that notice. I tend to think it will have a moderating effect on the notice, but that is a personal opinion.

Mr. Philip: So, in your opinion, the fact that someone is over 65 would likely mean he would get a smaller settlement by the courts than someone under 65.

Mr. Harris: Right. That is, again, my personal assessment. There is no authority at present to support that.

Mr. Callahan: Could I have a clarification of that? That is assuming 65 is the cutoff point.

Mr. Harris: No, it is not.

Mr. Callahan: It is not assuming that 65 is the cutoff point?

Mr. Harris: Right. Assuming there is no contract to the contrary.

Mr. Wildman: In other words, assuming it is vague.

Mr. Callahan: Assuming the contract was for life.

Mr. Harris: Assuming it is indefinite.

Mr. Wildman: Indefinite. Right.

Mr. Philip: One of your criteria is, was it reasonable. Can you explain that a little bit more?

Mr. Harris: The purpose of a court assessment of a notice period is designed to get someone what is referred to as reasonable notice. The purpose of a court awarding an individual entitlement to notice is designed to be sufficient time to allow the person to find alternative employment. The factors, again, are age, job responsibility, service history, etc. That is the purpose for which the notice is implied into the employment relationship.

Mr. Philip: I have given you a copy of the documents that were provided to us by Mr. Sorbara related to the retirement of Mr. Lewis. One of the key documents is section 74 of the Legislative Assembly Act. It says, "The Clerk of the Legislative Assembly shall hold office during good behaviour but shall be removed from office for cause by the Lieutenant Governor on address of the assembly."

As you know, unless there is a contract or a covenant to the contrary, crown employees are presumed to serve at the pleasure of Her Majesty. Would you agree this makes the Clerk of the Legislative Assembly more analogous to perhaps a private sector employee with a contract of some sort?

Mr. Harris: It certainly removes the idea of the right of the crown to remove at pleasure. It does not take it into the private sector, though. It is a little different from what you see in the private sector.

Mr. Callahan: It is like a judge.

Mr. Harris: That is correct.

Mr. Philip: Would you agree that cause could be a matter as simple as the fact that on July 7 Mr. Lewis resigned publicly and a committee of this Legislature appointed a new Clerk. In your opinion, would the appointment of a new Clerk be cause?

Mr. Harris: In that isolated description of the facts as you have presented the question, I think it could be.

Mr. Philip: In your opinion, would a letter from the former Clerk, Mr. Lewis, to the Board of Internal Economy suggesting that unless certain conditions were met things could be a little awkward for his successor in fulfilling his duties be what we would call cause for removal or an added cause?

Mr. Harris: Do I have that letter?

Mr. Callahan: Mr. Chairman, I do not want to interrupt Mr. Philip, but I think--

Mr. Philip: But you do want to interrupt.

Mr. Callahan: On a point of order: Mr. Philip is asking this

gentleman as a professional to give an opinion on facts that Mr. Philip is giving him as uncontroverted. In the last meeting we had, there was a question about whether that was a resignation in the House. In fairness, if this gentleman has not seen these documents; perhaps he should see them so that he can comment in the concrete as opposed to the abstract.

Mr. Philip: As I indicated earlier, and I guess you did not hear me, I supplied all these documents to our witness. Therefore, Mr. Harris does have all the documents.

Mr. Wildman: He just wants to know which one you are referring to.

Mr. Callahan: He is replying to the fact that those facts constitute a dismissal.

Mr. Harris: Which facts are we talking about?

Mr. Callahan: The Hansards that were given to you from the day the former Clerk supposedly resigned; whether it was a resignation.

Mr. Harris: As I mentioned, I was answering that in the abstract of the question being put.

Mr. Callahan: Rather than concrete.

Mr. Pope: That is fair. Anyone could put a series of facts to him and ask for his opinion.

Mr. Callahan: Assuming they are all the facts.

Mr. Philip: Perhaps Mr. Pope or Mr. Wildman will look through the documents and try to assist me. There was a letter sent in which Mr. Lewis suggested it would be very difficult for the new Clerk unless matters were settled. I am trying to find that letter. It may not be a part of the documents here. I have seen the letter in our great barrage of correspondence. It was supplied to me by our member on the Board of Internal Economy, and I referred to it in an earlier session. Perhaps Helen can locate it.

Ms. Fritz: Which letter are you looking for?

Mr. Philip: The letter in which Mr. Lewis suggests it would be difficult for the new Clerk to carry out his responsibilities if he were still around.

Ms. Fritz: I do not think that is in this package of documents. We have a reference to it.

Mr. Wildman: There is a letter of September 26 in the documents, which is addressed to Mr. Carman, in which the former Clerk says:

"As the Premier has announced my retirement, I am quite prepared to submit my resignation as soon as the promises that were made to me at the time are implemented and confirmed in writing. Recent events have convinced me not to trust anyone until I have it in black and white."

That is not the one you are referring to, though.

Mr. Philip: No. I think I can locate it, and I can do so while we are listening to the other questioners.

On July 7 Mr. Lewis stood in the House and said essentially that he thanked the people for his long and happy career, and everybody else thanked him. He also indicated he would like to move on to things that are less time demanding. In your opinion, would that be an open promise of resignation or a resignation? Would that constitute a resignation?

Mr. Harris: It would seem to indicate an intention to resign. I do not know whether it was accepted or what came before or after that, but it would certainly be indicative of an intention to resign.

Mr. Philip: Would the fact that each of the party leaders stood in the House and thanked him for his service be an indication that each of the parties accepted the resignation?

Mr. Harris: I would think so.

11:10

Mr. Philip: From the circumstances we have outlined--here is the letter, and I appreciate it. It is the letter of September 26, but it is a different paragraph from the one Mr. Wildman pointed out. Mr. Lewis writes to Mr. Carman on September 26 and says:

"I think you will agree that there has been ample time since July 2 for these matters to have been put in place, and the procrastination not only places me but my successor in a very embarrassing position. The present situation is most unfair to both of us."

Would you see that as threatening or suggesting that certain repercussions are going to happen that would hinder the successor?

Mr. Callahan: Surely the document speaks for itself. This witness cannot give that answer. He would be speculating.

Mr. Wildman: The question revolves around what "embarrassing position" means. You can read whatever you like into it.

Mr. Philip: Would you suggest that would be part of cause?

Mr. Harris: No.

Mr. Philip: The fact that he would interrupt the processes of the Legislature would not be cause for dismissal?

Mr. Harris: If he is asserting that promises had been made to him which had not been fulfilled and he is attempting to enforce them, I would not think there was any problem.

Mr. Philip: If someone resigned on July 7 and then, months later, stated he was not going to move because promises had been made to him, but there were no written promises, would that weaken his case in any kind of lawsuit against the employer?

Mr. Harris: You are comparing him as if he were in the private sector?

Mr. Philip: Yes.

Mr. Harris: I do not think so.

Mr. Wildman: He refused to move out of his office.

Mr. Harris: In the private sector, the employer would have a pretty strong right to move him out in any event and debate the matter later.

Mr. Philip: From the documents you have seen, if Mr. Lewis were in the private sector in the circumstances outlined, would he receive a very large settlement, in your opinion?

Mr. Harris: It depends on the circumstances that led up to the announcement of the resignation on July 7. If it was simply a voluntary resignation that was accepted, and if that was the bare fact, he would get nothing. It appears some discussion was had prior to July 7 that outlined some type of agreement that led to the resignation. It would be a matter of whether the agreement was enforceable. That is considerable speculation on my part, but if it were just as simple as "On July 7, I resign" and "Thank you very much; good luck in the future," there would not be any claim at all.

Mr. Chairman: Two minutes, Mr. Philip.

Mr. Philip: If it were understood by the employee, who was a fairly high-level employee, that any promises made would have to be ratified by a body in the private sector, be it a board of governors, a board of directors or something like that, and notwithstanding that, he simply resigned without having the board of directors meet and without having any kind of ratification of any promises, would that weaken his cause?

Mr. Harris: Certainly.

Mr. Philip: Would you agree from your understanding of the Legislature--and maybe you do not have this understanding, in which case you are free to say--that in the case of Mr. Lewis, he would have been in a position to know that any agreement that would be reached would have to be ratified and accepted by the Board of Internal Economy, by members of all three parties?

Mr. Harris: I am not qualified to answer that question.

Mr. Philip: I submit this would be analogous to the ratification of a board of directors of a company.

Mr. Wildman: In a sense, the Board of Internal Economy is the board of directors of the Legislature.

Mr. Philip: The Board of Internal Economy is the board of directors of a company, and ultimately the Legislature is the board of directors.

In the absence of that I submit, in the light of the private sector, the board of directors did not ratify the agreement. Therefore, according to the rules you seem to say apply, he would not get a very large settlement.

Mr. Harris: The real question to be answered is whether a deal was made prior to the date of the resignation that was subject to the approval of a higher body. If the man resigned and that approval was not obtained, and he did so knowing the consequences, he would be very hard pressed to--

Mr. Callahan: Your practice is restrictive, as you have indicated, and you have written a book. Have there been any other books written recently on wrongful dismissal?

Mr. Harris: There have.

Mr. Callahan: Can you name a couple of them?

Mr. Harris: There is one written by a person named Ellen Mole and one by a fellow named Howard Levitt. There is a fellow named Brian Grossman, who has written a book that is not strictly a legal text but does cover the subject matter.

Mr. Callahan: Are there any more than that?

Mr. Harris: There is a professor at Dalhousie University who has written a book. His name escapes me at present.

Mr. Callahan: How long have you been practising?

Mr. Harris: In this area?

Mr. Callahan: In this area. Let us start with that.

Mr. Harris: Since 1976.

Mr. Callahan: When were you called to the bar?

Mr. Harris: In 1975.

Mr. Callahan: Over the period from 1976 to the present, have you ever experienced a case where--you will have to bear with me, because this is my interpretation of what the Clerk has. I think you agreed it would be similar to a judge's tenure of office, subject to the most recent qualification of an age limit on that. Have you ever dealt with a situation where a person had potentially a lifetime contract?

Mr. Harris: We have another case quite analogous to this one right now, as a matter of fact; so the answer is yes.

Mr. Callahan: When you say it is analogous, how is it analogous? What was the fact of the situation?

Mr. Harris: I feel bound by solicitor-client privilege not to go into the details of it with you.

Mr. Callahan: I am not asking for names. I am just asking for perhaps--

Mr. Harris: Similar statutes; similar appointment.

Mr. Callahan: In this Legislature or in another one?

Mr. Harris: I decline to answer the question.

Mr. Callahan: Are you able to tell us what the compensation package was?

Mr. Harris: It has not happened. It is preventive advice.

Mr. Callahan: Is it before the court?

Mr. Wildman: Preventive advice?

Mr. Harris: Preventive.

There is also an issue that arises with respect to the appointment of university professors when they are granted tenure. The issue becomes lifetime employment.

Mr. Callahan: Is the one you are speaking of before the courts?

Mr. Harris: No.

Mr. Callahan: They are attempting to negotiate it in a friendly fashion?

Mr. Harris: No. It is not even at that stage.

Mr. Callahan: What would you estimate if the matter were taken to the courts? I understand you are familiar with the issues surrounding this event.

Mr. Harris: In fairness to myself, I read over the package of material this morning. I read the material that is before me, which I gather is in common circulation.

Mr. Callahan: Let me ask you a general question. With the figures we are talking about here, the case would be tried in the Supreme Court of Ontario to start off with. From what you have read, with the number of rather interesting legal issues as well as the assessment of damages, what do you estimate would be the shortest period of time to try this? Just a ball-park figure.

Mr. Harris: The shortest period of time to what?

Mr. Callahan: To conduct--let us say trial days.

Mr. Harris: You mean how long does it take to get to court?

Mr. Callahan: Let us get to court. Let us be in the courtroom. How many days would you estimate for a trial of this nature, with its legal complexities?

Mr. Harris: It might take a couple of weeks.

Mr. Callahan: I suppose that could be a couple of weeks or longer.

Mr. Harris: I do not think so. That is a pretty generous estimate.

11:20

Mr. Callahan: Will you agree with me that there are three levels of compensation? There are party-and-party costs, solicitor-and-client costs and solicitor-and-his-client costs.

Mr. Harris: Sure.

Mr. Callahan: The third level is the highest. That is where a solicitor charges his client.

Mr. Harris: Sure.

Mr. Callahan: The level of party-and-party costs is about one third that of the solicitor-client costs, which is the second level of costs.

Mr. Harris: I would not think so. It would be about one half.

Mr. Callahan: The level of costs for the solicitor and his client would depend upon a number of things: the hourly rate the solicitor charged for a trial and preparation, subject to taxation if it were deemed inappropriate.

Mr. Harris: Yes.

Mr. Callahan: As a matter of interest--and you may answer this if you wish; if you do not wish to, I will understand why--what would be the going rate for a lawyer such as yourself who devoted his practice to this type of activity for, let us say, preparation time?

Mr. Harris: Between \$175 and \$200 per hour.

Mr. Callahan: What about the charges for each day in the Supreme Court of Ontario?

Mr. Harris: Probably about \$1,200 or \$1,300.

Mr. Callahan: You are talking about what you or someone of your status would charge his or her client in that court.

Mr. Harris: Yes.

Mr. Callahan: Is it not also correct that the Judicature Act provides for prejudgement interest on a damage claim--and in essence that is what this is--from the time the writ is served?

Mr. Harris: We do not use writs any more, but a claim.

Mr. Callahan: From the time a statement of claim is served. That would be added on to the award. Is that added on to the costs as well or just to the award?

Mr. Harris: Just to the award.

Mr. Callahan: I would like to take it one step further. Let us say the matter was resolved, whatever way, in the Supreme Court of Ontario. What is the next step a litigant would have?

Mr. Harris: When you say "resolved," I gather you mean tried.

Mr. Callahan: Tried and found in favour of either party. Where does the next step go?

Mr. Harris: Either party has an automatic right of appeal to the Court of Appeal.

Mr. Callahan: And a two-week trial.

Mr. Harris: A 22-week trial?

Mr. Callahan: No. A two-week trial, which you estimated. If you go to the Court of Appeal, you have to order transcripts, do you not?

Mr. Harris: You do.

Mr. Callahan: Can you give us a ball-park figure of what the transcripts of a two-week trial might cost?

Mr. Harris: It depends on how much of the trial is devoted to arguments. As you know, arguments are not transcribed.

Mr. Callahan: Right.

Mr. Harris: If it took two weeks, let us say eight days of a trial, probably about \$300 or \$400 a day.

Mr. Chairman: Excuse me? Was that \$300 or \$400 a day?

Mr. Harris: It would be \$300 to \$400 a day for the preparation of transcripts.

Mr. Wildman: Is that what Hansard does?

Mr. Callahan: I think you will agree that the issues here are different.

Mr. Harris: The issues are different by virtue of the appointment pursuant to a legislative act.

Mr. Callahan: Right. In fact, in a very real sense, you would be asking a judge to gaze into a crystal ball to predict the length of time this man may have had to continue as Clerk.

Mr. Harris: There are many issues. That is certainly one of them. The first issue is whether the act of the Legislative Assembly is reviewable by the court itself.

Mr. Callahan: That in itself might wind up on a pre-trial motion and go through all the court processes before you even got to trial. Would that be a fair statement?

Mr. Harris: I would not think so. Do you mean a preliminary application?

Mr. Callahan: Yes.

Mr. Harris: It might.

Mr. Callahan: If either party were to take a case of this type to the Court of Appeal, what would you think? Would you think a day would be sufficient to argue the case?

Mr. Harris: The issue is a narrow one; maybe two days.

Mr. Callahan: Let us forget about the preparation time. What would the cost be of each day in the Court of Appeal?

Mr. Harris: About the same as a trial.

Mr. Callahan: Would you agree with me that, depending on which counsel took the appeal, he would have to go through the transcripts in preparation for the appeal?

Mr. Harris: Certainly.

Mr. Callahan: You probably had a two-week trial. You would probably be able to line them up and touch the ceiling with the transcripts.

Mr. Harris: There would be a lot of them.

Mr. Callahan: What would you estimate it would take in preparation just to read those transcripts once?

Mr. Harris: You would usually have a junior read it once.

Mr. Callahan: Does the junior get less than the senior?

Mr. Harris: Yes.

Mr. Callahan: What does a junior make?

Mr. Harris: He makes \$100 an hour.

Mr. Callahan: How many hours do you figure it would take for the junior to read those transcripts?

Mr. Harris: It would probably take about five days to go through the transcripts.

Mr. Callahan: Five days, and those are eight-hour days, are they, or longer?

Mr. Harris: In that neighbourhood.

Mr. Callahan: Let us assume an eight-hour day. Then he would prepare a brief for the lawyer arguing the case. Is that right?

Mr. Harris: Depending on what he was doing, he would probably prepare either an appellant's or a respondent's statement, a draft for the Court of Appeal.

Mr. Callahan: Memorandum of factums. He would have to research the law as well.

Mr. Harris: I doubt it. That would have been done at trial.

Mr. Callahan: I see; okay. Then the counsel who will be arguing the appeal would at least read the salient points of the transcript rather than rely upon the junior to--

Mr. Harris: It depends on whether he conducted the trial. If he conducted the trial, he would obviously be familiar with the issues and would

go over the brief the junior had prepared. If something comes to mind, he may dig for it in the transcript.

Mr. Callahan: All right. Let us say that at the trial level the judgement went against the defendant--in this case, presumably the defendant would be the province--and it went to the Court of Appeal. What would be the earliest time that you think, in the present situation, a case could be prepared and ready to be argued in the Court of Appeal?

Mr. Harris: It is a function, first, of the time required for the preparation of transcripts. At present, we are probably running about four or five months, which is good time to get a transcript from a trial. Then you perfect your appeal. If you are doing it promptly, you do it in a month.

Mr. Callahan: Then it has to be called.

Mr. Harris: Then it goes on a list. Once it is perfected, it goes on a list in the Court of Appeal and waits to be called. You are probably talking about a waiting period now of about four or five months, depending on whether you catch July and August, when the Court of Appeal does not sit.

Mr. Callahan: Would it be unfair to say that perhaps a year might slip by before everything is completed?

Mr. Harris: It might.

Mr. Callahan: During that time, would I be correct that prejudgement interest, if the appellant were unsuccessful, would still be running?

Mr. Harris: Right.

Mr. Callahan: As I understand it, it runs at the bank rate in force in a chartered bank at the time the statement of claim is issued.

Mr. Harris: There is actually an adjustment once you get a judgement. It reflects to a post-judgement interest once you get a judgement.

Mr. Callahan: But prejudgement is the amount that is prevalent for a good borrower.

Mr. Harris: It is prime.

Mr. Callahan: Prime plus one, probably, or is it prime?

Mr. Harris: No, it is prime; from the time you gave notice of the action forward.

Mr. Callahan: Okay. Then after you have been in the Court of Appeal for two days and the respondent has lost the appeal and chooses to appeal to the Supreme Court of Canada, what is required to prepare a case for the Supreme Court of Canada?

Mr. Harris: Then you have to apply for leave to the Supreme Court of Canada.

Mr. Callahan: What would be required to launch an application for leave to the Supreme Court of Canada?

Mr. Harris: Basically the same concept. You still have the transcripts, obviously, from the first round, so that you move for leave to appeal to the Supreme Court of Canada and prepare a factum of law to brief the Supreme Court of Canada.

Mr. Callahan: In essence, if you use the same counsel, which may or may not be the case, depending on his or her success at the trial level or the appeal level, we could potentially have the same preparation time with juniors and counsel that we have encountered at the Court of Appeal.

Mr. Harris: One would think it will be condensed, because you are doing the same thing again, virtually.

Mr. Callahan: You are narrowing down the issues, I suppose.

Mr. Harris: You are not only narrowing the issues, presumably, but also repeating what you did in the Court of Appeal, essentially.

Mr. Callahan: To get an application on to the Supreme Court of Canada simply for leave to appeal, what period of time would we be looking at after the Court of Appeal renders its judgement?

Mr. Harris: About six months.

Mr. Callahan: Six months. The time for hearing of that leave to appeal would be--

Mr. Harris: It is relatively quick, within the six-month period.

Mr. Callahan: Within the six-month period; all right. Assuming that the Court of Appeal gave you an oral judgement the day of the appeal--if it did not; if it reserved on it, as, on complex issues, it normally does--is that not right? It would give you a written judgement?

Mr. Harris: True.

Mr. Callahan: That could be expanded, perhaps, beyond the six months to as high as a year or even beyond, I suppose.

11:30

Mr. Harris: It would be unusual for the Court of Appeal to reserve for a year.

Mr. Callahan: All right. When you get to the Supreme Court of Canada for leave to appeal, that is not the appeal hearing.

Mr. Harris: No; it is just leave.

Mr. Callahan: You are required to secure leave, and that requires, obviously, a trip by someone to Ottawa--

Mr. Harris: Yes.

Mr. Callahan: --or retaining counsel in Ottawa.

Mr. Harris: You probably would not retain counsel; you would probably do it yourself.

Mr. Callahan: After you get your leave, assuming you do--

Mr. Harris: Leave is very hard to obtain these days.

Mr. Callahan: I realize that; but assuming you get your leave, particularly in this issue, on a very novel point--and the Supreme Court of Canada would probably agree to grant leave in a novel case such as this because of the nature of the--

Mr. Harris: It is not something you can state quite so affirmatively.

Mr. Davis: Leading the witness.

Interjections.

Mr. Philip: No. Let him finish, and then I have a supplementary at the end of this. He is building my case. I do not want to hurt it.

Mr. Callahan: All right. You get to the Supreme Court of Canada. How long does it take after you are granted leave? What do you have to do after you are granted leave to perfect your appeal for a full hearing of the Supreme Court of Canada?

Mr. Harris: Then you file your factums.

Mr. Callahan: File your factums. Then how long after--

Mr. Harris: About a year.

Mr. Callahan: About a year after you have received leave, you would get to the Supreme Court of Canada.

Mr. Harris: That is right.

Mr. Callahan: After you get to the Supreme Court of Canada, how many days would you figure the argument would be in the Supreme Court of Canada?

Mr. Harris: It would probably be half a day.

Mr. Callahan: Is it not correct that if the matter consumes half a day and a little, the members of our revered profession actually charge for a full day?

Mr. Harris: It depends on how that half day is broken up. If you are just there in the morning and your arguments are in the morning, it is only a half day.

Mr. Callahan: Am I correct that when the Supreme Court of Canada hears a case, it does not give an oral judgement?

Mr. Harris: That is true.

Mr. Callahan: It reserves judgement, and it goes on the list behind those being contemplated.

Mr. Harris: Yes.

Mr. Callahan: What is your experience of when one can expect a

judgement after you have argued your case in the Supreme Court of Canada?

Mr. Harris: You are probably talking about a delay of up to six months or maybe a year.

Mr. Callahan: Just to go back to the preparation for the Supreme Court of Canada, obviously you have--

Mr. Philip: May I ask a supplementary of this point?

Mr. Callahan: Sure.

Mr. Philip: Would it not be normal for someone wishing to go through the kind of legal proceedings you are talking about to ask a solicitor: "In the worst-case scenario, if it were to go to the highest level of appeal, the Supreme Court, how long would it take from the time I initiated my action until the time I find I might receive some money?" Can you put a year figure on that?

Mr. Harris: From start to finish?

Mr. Philip: Yes.

Mr. Harris: If it went all the way to the Supreme Court of Canada, which is very, very unusual, you would probably be talking about a period of about six years.

Mr. Philip: Six years. From your experience, would there not be tremendous psychological pressure on a man 75 years old not to want to go through a six-year series of litigations before he received any compensation? Would he not be highly motivated to settle at a lower level and back off?

Mr. Harris: There would be that pressure on a 21-year-old.

Mr. Callahan: You have said six years, and that is probably a fair estimate. It probably could be longer than that, depending upon how swiftly the solicitors acted and how the court listed--

Mr. Harris: As you know, there are a lot of variables in the time parameters of getting to trial.

Mr. Callahan: I am going to get to that. The six years is probably the shortest time in which you could go through this whole process, and it could be lengthier than that.

Let us go to the pre-trial stuff. You issue your statement of claim. The defendant has a certain period of time--I cannot recall what it is now--for a response.

Mr. Harris: Thirty days.

Mr. Callahan: Then there is a response by the plaintiff called a reply, or whatever they call it these days.

Mr. Harris: Ten days.

Mr. Callahan: Then there is an opportunity to have pre-trial motions or, if appropriate, the particulars or whatever else in the statement. Then

you set up the discoveries. Are discoveries easy to get these days?

Mr. Harris: Easy to get? Sure.

Mr. Callahan: With respect to time lag?

Mr. Harris: The routine is, as you mention, that after the close of pleadings--

Mr. Callahan: What is the framework there from the time of the issue of the claim until the close of pleadings? I mean the maximum amount you are allowed, not what some lawyers would take to do it.

Mr. Harris: The maximum amount is really to be determined by the parties. The rules contemplate 30 days for a defence and 10 days for a reply; therefore, 40 days.

Mr. Callahan: Would it be fair to say that to get onto discoveries if the matter were proceeding expeditiously, we might be looking at two months between the issuance and the serving of a statement of claim and the discoveries being--

Mr. Harris: Or longer. About a month and a half after the pleadings are finished, you generally have discoveries. Prior to discoveries, an exchange of documents is required.

Mr. Callahan: Then you have your discoveries. In a matter of this type, where you are going to have two weeks of trial, how long will the discoveries take?

Mr. Harris: It depends on how the pleadings determine the issues and on what facts have led up to the litigation. For example, if a motion in the House asserted cause, as is contemplated, and if that motion were dealt with, there would be an issue of the particulars of cause to be examined. What are the specifics? Who said what? Who was on first when this happened? It would be a matter of determining the particulars of the defence to examine not only the length of discovery but also the length of trial.

Mr. Callahan: I am running out of time. We have gone through from discovery to trial, but during all this time, the prejudgement interest has been running?

Mr. Harris: That is true.

Mr. Callahan: Just to get to the issue, is wrongful dismissal considered to be a contractual action or a tort action?

Mr. Harris: It is considered to be a contractual action. There are tort claims that sometimes can be joined to, or run out of the fact of, a termination. Those are unusual. Usually it is a contract.

Mr. Callahan: Would you agree that in a situation such as this factual situation, a judge would be faced with the question, on assessment of damages, of determining the length the contract still had to go, which in this case presumably was life, times the yearly salary--

Mr. Harris: If you can show liability on this legislation, you are right, it will be an assessment of lifetime earnings less contingencies in the regular course.

Mr. Callahan: A judge, in assessing the damages, would look at the contract, and if he determined it was a lifetime contract, he would try to determine from actuarial tables how long that man's life would last?

Mr. Harris: When you say lifetime contract, there is a provision in the Master and Servant Act to be contemplated. It states that no contract can be longer than nine and a half years or 10 years.

Mr. Callahan: The Legislature can override anything.

Mr. Harris: If it does so specifically.

Mr. Callahan: Assuming that the facts we have discussed were the case, in assessing the damages the judge would be looking, probably on a table basis, at the question of how long it would be estimated that man would live and then taking the number of years he arrived at and multiplying it by his annual salary, subject to contingencies and so on?

Mr. Harris: Yes. The damage assessment, presuming that it is a proven fact that the claim is life, one would then measure expected earnings, minus expected income from alternative sources and minus the contingency of death during that time. Lifetime brings that in.

Mr. Callahan: Plus grossed up costs of prejudgement interest and tax.

Mr. Chairman: Order. Mr. Harris, can you remain around for a while or is it impossible? We have a couple of people on the list. We have to break.

Mr. Harris: What are we contemplating here at the time?

Mr. Chairman: That must be another quorum call. I am getting ahead of myself. You have exhausted your time, Mr. Callahan. You can get back at it later.

Mr. Gillies: I do not expect to be overly lengthy. Thank you, Mr. Harris, for agreeing to appear. The point you just made, that under the Master and Servant Act no employment contract is in effect--

Mr. Harris: It is either nine and a half years or 10 years; I am not sure.

Mr. Gillies: Okay. The clause in the Legislative Assembly Act reads, "The Clerk of the Legislative Assembly shall hold office during good behaviour but shall be removable from office for cause by the Lieutenant Governor on address of the assembly."

You indicated, I think quite rightly, that if anything were to supersede the Master and Servant Act, it would have to be a very specific indication from the Legislature that any given contract do so. Do you read subsection 74(2) of the Legislative Assembly Act as a specific override?

Mr. Harris: It is hard to say.

11:40

Mr. Philip: Would the courts, knowing they pay attention to a decision of the Legislature as being the law of the province, not be satisfied that a decision there was cause, whether justified or not in the Legislature, be an acceptance that there is cause?

Mr. Harris: It would be very hard for a court to override a decision of the Legislative Assembly. The other issue is whether the crown can be sued at all. The common law principle is that the crown is immune to claims and contracts.

Mr. Philip: Therefore, if the Legislative Assembly, the government, had simply introduced the motion saying, "We feel that for cause, Mr. Lewis's services are no longer required," a court would hardly have ruled the Legislative Assembly had committed an error and did not have cause?

Mr. Harris: You might get into the mechanics of how the Legislative Assembly was sitting. If it was sitting as a committee of the whole House, which is sometimes done in municipal councils, there might be a different consideration, but if it was sitting as a Legislative Assembly in itself and passed a bill or determined there was cause for termination, it would be very hard to review that in court, particularly given the concept of crown immunity.

Mr. Philip: Anything passed in committee of the whole would have to be passed by the Legislative Assembly, so a motion would have to be passed by the House at some time.

Mr. Harris: Right, subsequently ratified.

Mr. Philip: Therefore, in your opinion, all the government had to do to substantiate cause was simply to pass a motion saying there was cause.

Mr. Harris: I am saying is it would be very difficult to override that judicially.

Mr. Gillies: There are about three issues here. The first is the one we are getting at now. When I look back at the Hansard of the discussions we had in the Legislature on the day Mr. Lewis was retiring--or a number of us in the assembly thought we were paying tribute that day to Mr. Lewis on his retirement--it is not clear in my mind whether Mr. Lewis is, in fact, continuing today, although his status has been altered, under the provisions of subsection 74(2). Or did he retire and remove himself from the provisions of 74(2) on the date we all sat in the House and paid tribute to him? I am not a lawyer and, frankly, I do not know. I am beginning to wonder what happened that day. This becomes very critical, as far as I am concerned.

Mr. Callahan: At the very least, it was conditional.

Mr. Gillies: Yes. If Mr. Lewis is still covered by 74(2), then it may well be that the tenure question supersedes the usual provisions of the Master and Servant Act. That is issue number one. I guess we cannot come to a definite conclusion on that.

The other thing I would like to ask you about is the package voted on by the Board of Internal Economy, including the office space, the annuity, the office furniture and all of this stuff, on top of the pension per se. How usual is the negotiation of a package of that scope? If it were determined that the court did have jurisdiction to look at this and rule as to whether it was appropriate, are there many things to which we can compare it? Are there many senior executives who retire with this kind of package?

Mr. Harris: You would have to look at this as having a life unto itself. I do not think you can look at a president of a private corporation receiving comparable severance.

Mr. Gillies: In your experience, based on cases with which you have dealt, how usual is it for a retiring person of any status to be granted a lump sum annuity with the intent that the annuity will pay a certain number of thousands of dollars a year? Does that happen often?

Mr. Harris: That would be unusual.

Mr. Wildman: As a matter of clarification, my understanding is that the annuity still belongs to the crown. It is not his annuity. He gets the interest from the annuity.

Mr. Gillies: Okay. I am glad you clarified that because in the list--

Mr. Philip: The annuity goes to the corporation, not to the crown, is that not it?

Mr. Gillies: I am not clear on that. I hope Mr. Wildman is right, because the way it is worded in the list I am looking at, all it says is: "The purchase of an annuity at a cost of approximately \$220,000 to provide Mr. Lewis with an annual payment of \$21,600." It is not very clear from that who owns the annuity.

Mr. Wildman: I think I am correct but I am not sure.

Mr. Callahan: At 10 per cent.

Mr. Gillies: No, I understand the calculation of the annual payment. That is no problem. What is not clear here is who owns the principal. Does the crown or is it being held for Mr. Lewis?

Mr. Wildman: I think it is the crown.

Mr. Gillies: A lot of my questions probably would not lead too far, Mr. Harris, because you are telling us this is a very unusual package. It has a life of its own and is not easily comparable to other settlements with which you are familiar.

Mr. Harris: It is not comparable at all to what you would see in the private sector. There are different issues here.

Mr. Gillies: How about other public officials?

Mr. Harris: Even dealing with other people from the public sector--

Mr. Wildman: A deputy minister, for instance.

Mr. Harris: It would still have a life of its own.

Mr. Gillies: I have one other question if I may and I apologize if this came up. There were a few minutes when I had to go upstairs to speak in the House.

Regarding the grand total of settlements in this country, we had Mr. Sorbara quoted as saying if we did not grant a generous package to Mr. Lewis, he could have sued for up to \$10 million or however many millions.

What is the case law in this area of Canada? What kind of settlements are being granted across the country on executive retirements?

Mr. Harris: If you look to the private sector, not dealing with this circumstance but with the private sector, and I mentioned it in your absence, the concept of compensation upon termination revolves around an implied term where the employer gives reasonable notice. In the absence of receiving that notice, the employee has a right to claim the earnings he would have received in the notice period of which he has been deprived.

Mr. Wildman: That is 21 months.

Mr. Harris: The highest in Ontario is 21 months. Therefore, the private sector compensates the individual for the loss of income, benefits, car, pension or what have you that would normally have accrued in that time period.

Mr. Gillies: Okay. Even if one were to be one of the highest-paid executives in the province--and I have heard figures in the \$600,000 a year range or a million, I guess. I know Victor Rice is making about half a million now. If you were making a million dollars a year in salary and benefits, the most one could expect in Ontario is 21 months of that.

Mr. Harris: You might get a couple of years.

Mr. Gillies: A couple of years. It is probably unheard of in this province that a settlement would be more than \$2 million.

Mr. Harris: Well, to express it in terms of multiples of income, let us say two years.

Mr. Wildman: As a nonlawyer, I found this a rather esoteric discussion, but I would like to bring up a couple of things. My understanding is that in law the Legislature is the highest court in the province.

Mr. Callahan: Excepting the Charter.

Mr. Wildman: Excepting the Charter; I would accept that.

Mr. Harris: It is a body unto itself. It would not be considered a court in the traditional term of a court.

Mr. Wildman: The Legislature can sit as a court. It can call people to the bar of the House and it can sit in judgement.

Mr. Harris: That is something with which I am unfamiliar.

Mr. Callahan: I thought you counted him out here.

11:50

Mr. Wildman: Not that bar of the House. I have always thought that is amusing when lawyers call themselves to the bar rather than being called to the bar.

Mr. Callahan: They are always practising too, but they never get it right.

Mr. Wildman: At any rate, the House can sit as a court. I am not asking if you are familiar with that, but in that sense, that leads to the concern you mentioned before that there might be argument that a court,

whether it be a Court of Appeal or the Supreme Court, does not have the jurisdiction to deal with a matter that has been determined by the Legislative Assembly.

Mr. Harris: Yes.

Mr. Wildman: What I am saying is related to the fact the Legislature is a court.

If that argument were successful, the whole process would grind to a halt, would it not, if the defendant in this case, if there were a case, were to argue successfully that this matter could not be adjudicated in a court.

Mr. Harris: There would be no point.

Mr. Wildman: In that sense, the appellant would, or could end up with nothing.

Mr. Harris: The plaintiff, yes.

Mr. Wildman: Could you also answer a couple of other things? I know this is hypothetical, but if you were advising a complainant in this kind of situation, prior to proceeding you would advise the client on the probability of success of his plea, would you not?

Mr. Harris: Yes.

Mr. Wildman: I understand you are not familiar with all the complexities of this, but would you be confident of success if you were advising a client of this sort in this kind of case?

Mr. Harris: When you say confident of success, are you presuming there is an act of the Legislature determining there was cause for removal of Mr. Lewis--

Mr. Wildman: No, without that, without the Legislature actually having passed a bill saying there was cause.

Mr. Harris: There would not be any action available until that happened. That would be the momentum that would allow some type of action available for Mr. Lewis to--

Mr. Wildman: You will have to forgive me. As I said earlier, I am not a lawyer. If Mr. Lewis is not happy or if he were not happy with what has been offered--

Mr. Harris: Oh, you mean currently?

Mr. Wildman: Currently--and he wanted to take action because hypothetically he felt there had been some sort of agreement between him and the Premier (Mr. Peterson), or the leaders of the parties, that had not been fulfilled--

Mr. Harris: Then he would have to sue on that agreement.

Mr. Wildman: He would then have to be able to produce some sort of agreement, I would think, either verbal or written.

Mr. Harris: It is a matter of the evidence to support his assertion that there was an agreement.

Mr. Wildman: On that basis, would you be confident that a successful--you would have to see what kind of agreement--

Mr. Harris: We would have to see what kind of evidence there is to support it. There is also the principle that the crown is immune in the claim in contract--

Mr. Wildman: Yes.

Mr. Harris: I would have to look at the evidence really to make a determination of that concept.

Mr. Wildman: What is the actuarial age for men that is normally used?

Mr. Harris: You would have to ask an actuary that. I would not have that expertise.

Mr. Callahan: I think for politicians it is about 40.

Mr. Wildman: I think it is about four or five years.

Do you have any experience with cases that actually do drag on right through the Supreme Court of Canada and end up with a six-year period, as we were talking about earlier?

Mr. Harris: Certainly, it happens. It is an unusual event when that happens. It will be unusual for a case to enter a Court of Appeal.

In terms of the regular course of events, certainly we go to Court of Appeal frequently. But in terms of the percentage of cases that go to trial, probably in all the cases litigated, at least in my practice, perhaps a single digit number of percentage would go to trial. Perhaps nine per cent, perhaps six per cent, would actually go to trial. Of that, a fair number--perhaps 30 per cent or 25 per cent--are appealed to the Court of Appeal.

Mr. Wildman: But very few would go beyond that?

Mr. Chairman: That augurs well for your advocacy.

Mr. Harris: Yes. Perhaps we are too easy.

Mr. Wildman: A large percentage of your clientele ends up with some sort of settlement outside court?

Mr. Harris: That is certainly the case. It may be because of the nature of the practice. Because you are acting for an individual, you tend perhaps to be a little more cautious than if you were acting for a corporation, in view of the costs being incurred.

Mr. Wildman: If someone were anticipating the costs that might be entailed in a six-year court battle, that would encourage the client, or both sides, to settle outside of court, would it not?

Mr. Harris: Particularly a plaintiff, who is always disposed to try to resolve things. There is a discount one would always apply to try to

Mr. Wildman: Keeping in mind your comment that this is a very unusual situation, in most cases you are aware of, the best settlement a plaintiff in the private sector can attain is about two years. Let us say, for the sake of argument, someone were making a \$1-million salary; two years would be \$2 million. In most cases, even if a person were making that kind of money, there would be a lesser settlement, would there not, if he decided not to go the whole route through the court?

Mr. Harris: If you are talking of a high-income earner such as --

Mr. Wildman: He might be more willing to go through the court?

Mr. Harris: No, I think the contrary. I think he would be more willing to settle, because the amount of money he would be getting would still be tremendous.

Mr. Callahan: Can I get a point of clarification? You are talking about the two-year notice as being where there is no contract with a definitive time limit. Is that not right?

Mr. Harris: Correct.

Mr. Callahan: I want to be clear on that.

Mr. Harris: We are talking about the private sector.

Mr. Callahan: Also, where there is no time limit and no contract, I believe you said 21 months is the longest period a court has assessed. If you have a contract ending in 2001 or, in this case, for life, you are governed by that, not--

Mr. Harris: No. You are governed by the Master and Servant Act.

Mr. Wildman: It is assuming 10 years.

Mr. Callahan: Assuming that the Legislative Assembly Act of Ontario, as specific legislation, does not override the general legislation of the Master and Servant Act?

Mr. Harris: Correct.

Mr. Callahan: In which case, you could be looking at a lifetime contract?

Mr. Harris: Yes. The contest, as you say, is between--

Mr. Wildman: Frankly, as a nonlawyer, I find it hard to believe that what we are talking about abdication as the only way Mr. Lewis could leave his job. What you are talking about is the equivalent of King Edward VII, that there is some kind of lifetime contract and the only way he could be relieved of his position is if he decided voluntarily to abdicate it. That is a little ridiculous.

Mr. Chairman: We have another point of clarification.

Mr. Philip: I am sure Mr. Callahan will understand that even the subsection states he can be removed.

Mr. Pope: Subsection 74(2) states, "The Clerk of the Legislative Assembly shall hold office during good behaviour but shall be removable from office for cause by the Lieutenant Governor on address to the assembly." That is not a life contract.

Mr. Callahan: No, but that cause is pretty tough.

Mr. Harris: For cause.

Mr. Pope: On address by the assembly.

Mr. Harris: Any contract is terminable for cause.

Mr. Wildman: Except the Queen.

Mr. Philip: Charles I did not find that.

Mr. Gillies: Just for clarification, I think Mr. Wildman meant Edward VIII. Edward VII died in office.

Mr. Wildman: That is right, Edward VIII.

Mr. Gillies: With a little help, we hear.

Mr. Callahan: I am glad you cleared that up; I was really concerned about that.

Mr. Wildman: There is the other option we have discussed, which is that the Legislature, if it had desired, or if the government had wished, could have brought in legislation to determine cause. I assume that would end the matter.

Mr. Harris: My assessment is it would be tough to beat that in court.

Mr. Wildman: If the government believed there was cause and did not want to risk an enormous settlement of whatever amount, that was one option open to the government; it could have brought legislation before the Legislature saying there was cause.

Mr. Callahan: Would you guys have passed it?

Mr. Harris: If you are talking about what could have been, that could have been--

Mr. Wildman: That was one possible route they might have considered.

Mr. Harris: Or that could have been threatened in an attempt to negotiate something.

Mr. Wildman: In other words, if they were faced with threats from the Clerk that he was not going to leave willingly and was prepared to take action, and if they were prepared to match threat for threat, that was one threat they could have used.

Mr. Harris: Yes.

Mr. Callahan: I have a supplementary on that. The Legislature was at one time supreme. In a recent statement to an eminent law school in the United

States, one of our senior jurists said that in the light of the Charter of Rights, the Legislature is no longer supreme but is governed by such terms as equality before the law, the undesirability of retroactivity and so on. Even if we were to pass that type of legislation and my friends were to vote for it, it would probably be the most unjust piece of legislation that could have been passed. Even assuming it were passed, would you not agree there would be some question under the charter of whether the Legislature's actions could not be ruled out of order because of the Charter of Rights?

Mr. Harris: What section of the charter would you be dealing with?

Mr. Callahan: Equality before the law, fair treatment. I cannot remember the specific section.

Mr. Harris: He would be entitled to a fair hearing before the legislative body, but if the procedural requirements of natural justice are reported to him, the test would not only be the reviewability of the act, but also the substantive components of cause that have been put forward.

Mr. Callahan: The natural justice would entail investigating whether the Legislature truly had cause or whether it was just legislatively manufacturing cause.

Mr. Wildman: That could be dealt with in a committee proceeding as part of the legislative process.

Mr. Davis: I would like you to clarify what I believe I heard you say when Mr. Pope asked his question and read subsection 74(2) to you. You indicated that was not a lifetime contract.

Mr. Harris: No. I said it is not lifetime; it is terminable by cause.

Mr. Davis: All right.

Mr. Callahan: It is pretty tough to get that cause.

Mr. Wildman: Or it is perhaps subject to the Master and Servant Act.

Mr. Harris: That is a matter of interpretation. Just to put my expertise in focus, I do not purport to be an expert in constitutional law. It is a subject of judicial interpretation of which act overrides the other.

Mr. Davis: The cause would simply be that the government did not believe the Clerk was carrying out his duties to their expectations.

Mr. Chairman: I am afraid the bells are ringing.

Mr. Harris, especially in reference to the hourly rate you were talking about earlier, we appreciate your contribution of time and experience.

Mr. Philip: Am I allowed for a second--

Mr. Chairman: No. Again, Mr. Harris, thank you very much.

In terms of keeping with our agenda, could we have a motion to approve the supplementary estimates so that they can be submitted to the Board of Internal Economy.

Agreed to.

Mr. Philip: I just want to say that expert witnesses are normally paid for their services. As I understand it, Mr. Harris's office indicated he considered his appearance here to be a public service. We appreciate that he has waived his fee and saved the taxpayers of Ontario some money. We commend him on his public spiritedness and we appreciate his co-operation. His testimony was most useful.

Mr. Callahan: We will send you an income tax receipt.

Mr. Harris: That is great.

Mr. Chairman: Believe it or not, we got through the agenda.

The committee adjourned at 12:04 p.m.



STANDING COMMITTEE ON PUBLIC ACCOUNTS

GOVERNMENT INVENTORIES

RETIREMENT OF CLERK

SAFETY ASSOCIATIONS

IDEA CORP.

THURSDAY, DECEMBER 11, 1986

STANDING COMMITTEE ON PUBLIC ACCOUNTS

CHAIRMAN: Runciman, R. W. (Leeds PC)

VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)

Barlow, W. W. (Cambridge PC)

Callahan, R. V. (Brampton L)

Davis, W. C. (Scarborough Centre PC)

Epp, H. A. (Waterloo North L)

Mancini, R. (Essex South L)

Philip, E. T. (Etobicoke NDP)

Pope, A. W. (Cochrane South PC)

Smith, D. W. (Lambton L)

Wildman, B. (Algoma NDP)

Substitutions:

Fish, S. A. (St. George PC) for Mr. Davis

Knight, D. S. (Halton-Burlington L) for Mr. Epp

Also taking part:

Ferraro, R. E. (Wellington South L)

Martel, E. W. (Sudbury East NDP)

Clerk: Arnott, D.

Staff:

Fritz, H., Research Officer, Legislative Research Service

Witnesses:

Sorbara, Hon. G. S., Minister of Colleges and Universities and Minister of
Skills Development (York North L)

Nixon, Hon. R. F., Treasurer of Ontario and Minister of Economics, Minister of
Revenue and acting Chairman of the Management Board of Cabinet
(Brant-Oxford-Norfolk L)

From the Development Corporations:

MacKinnon, D., Executive Director and Chief Executive Officer

Cass, B. E., Director, Legal Services

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PUBLIC ACCOUNTS

Thursday, December 11, 1986

The committee met at 10:19 a.m. in room 151.

Mr. Chairman: Could we come to order, please?

Hon. Mr. Sorbara: Do you want me here?

Mr. Chairman: Yes, Mr. Sorbara.

ALLEGATIONS AGAINST MEMBERS

Mr. Philip: On a point of privilege, Mr. Chairman: I have a point that affects all members of the committee. It is important that all members feel free to deal with any matter before us without any kind of intimidation. As I said on Metro Morning on Monday, I feel that the intimidation of two members of the committee by the Office of the Premier, in allegedly leaking stories about Susan Fish and Alan Pope that indicated they were guilty in some way of either knowing where certain missing furniture was or of possessing certain furniture and movable assets, can be seen by us as a form of intimidation.

A letter from you to the Premier's office, asking for either a retraction that no one in the Premier's office fed that to the CBC or, failing that, a written apology to you as the committee chairman expressing an apology to the two members who were affected, would be appropriate.

Mr. Chairman: Thank you, Mr. Philip. They alerted me to this a couple of minutes ago and I have been giving it some thought. My initial inclination is to concur with the Speaker. The Speaker ruled in this matter, as members will be aware. The comments took place outside the chamber and he ruled that it did not constitute a violation of members' privileges. I am prepared to think about it for a week and perhaps consult the Clerk of the House and make a ruling next week or, within the purview of the committee, if the committee as a whole feels that its privileges have been violated, we could report such to the House. My inclination at this stage is to not find it as a violation of privileges but I am prepared to take a week to consult with others.

10:20

Mr. Gillies: I concur with the way you propose to proceed on this. You might take into consideration another occurrence. My colleagues will agree I have never been one to bitch or whine much about the treatment we get around here. Politics is a tough game and somebody has to do it.

Mr. Mancini: No, never.

Mr. Gillies: Four or five weeks ago, I had to--

Interjection: (Inaudible) Canada pension after four or five years.

Mr. Gillies: I am not going to get into that one. Four or five weeks

ago, I had to defend myself against charges that I stood to benefit from a \$1-million land deal in Brantford, which was completely preposterous. I would love some day to own a million dollars worth of land, but that is far from the case at present. I was led to understand by members of the press gallery who felt obliged to put these questions to me that the impetus for this particular rumour had also come from the Office of the Premier. I have no first-hand knowledge that was the case; however, the people who felt obliged to cross-examine me on this matter indicated this was the case.

It did not bother me. In fact, I got a rather good press article out of it when they had to retract the whole thing. Along with the points raised regarding my two colleagues, it may indicate a consistent pattern of behaviour by the Office of the Premier vis-à-vis members of this committee who raise things that office does not like raised. I ask you to take that into account in making your ruling, Mr. Chairman.

Mr. Pope: I will be very brief. I cannot add much to what I said last week other than to say that I think the Premier's office is engaged in political espionage and intimidation. They are abusing the powers of the government. They are using civil servants to orchestrate this material.

Mr. Chairman: We got into this last week, Mr. Pope.

Mr. Pope: I will tell you right now, I am not going to be intimidated by any of that nonsense. They can bring any allegations they want. They can prove anything they want. I have been in public life since I graduated from law school. I have been in city council. I have been a candidate. I have been a member of the Legislature, I have been a member of the cabinet. I am not going to have a bunch of idiots up in the Premier's office trying to tell me that what I have done in the past 10 years has been illegal or unethical. I do not give a damn what those guys think up there. I think they are abusing their powers of office and I think it is the mark of a corrupt and decadent government.

Mr. Barlow: Could you speak a little plainer than that?

Mr. Gillies: Maybe I should clarify that.

Mr. Chairman: Mr. Wildman, I assume you are going to repeat your comments from last week as well.

Mr. Wildman: Mr. Chairman, I concur with the views of my colleague the member for Etobicoke (Mr. Philip). As you anticipated, I must reiterate my concern over the tone of the comments from the member for Cochrane South (Mr. Pope). I understand why he may feel so upset, but terms such as "political espionage" and so on are out of order and should not be used in this body.

Mr. Chairman: I concur. I supported you in that view last week as well. We will move on to the regular order of business and I will rule on Mr. Philip's request next week.

RETIREMENT OF CLERK

Mr. Chairman: Mr. Sorbara, welcome back to the standing committee on public accounts. I believe Mr. Philip was in full flight when we adjourned. We will turn the floor over to him.

Mr. Philip: When we were last questioning the minister, he stated

that he was misquoted in his \$10-million figure. Subsequently, CBC radio played a tape of that, which the minister has probably heard or has had reported back to him, in which he clearly used the figure of \$10 million as the cost to the taxpayer. Will the minister now reconsider the position which he took at the last session of this committee, in which he stated he was misquoted?

Hon. Mr. Sorbara: I would not mind having an opportunity to clarify that whole issue. Perhaps a better word would have been that my comments were "misinterpreted." During the hearings we had two weeks ago, I think I did acknowledge that I had used a figure of \$10 million in a hyperbolic fashion. The tapes Gerry McAuliffe played on his news broadcast clearly indicate that. In fact, what I am quoted as saying is: "Mr. Lewis would have said 'There is no cause. Here is my writ for \$10 million.'" That was sort of a dramatization of the kind of thing that might happen.

Subsequent to that, I think, on a number of broadcasts and by the member from Bellwoods (Mr. McClellan), I was quoted or my comments were interpreted as saying it would cost the government \$10 million. I never said it would cost the government \$10 million. I used a little dramatization to portray the fact that we might be subject to a lawsuit.

Those people on the committee who are lawyers realize that in a statement of claim by a plaintiff, the amount the plaintiff claims is generally far in excess of what he actually recovers, because of the principle of law that a plaintiff can never recover more from a jury or a judge than that which he has claimed in a writ.

A lawyer acting for Mr. Lewis in a potential suit would claim \$10 million, \$20 million, \$40 million, \$50 million. He would put a figure in there and then the trial judge would determine what the suit was. I used that as a kind of hyperbole and I was quoted as suggesting that the value of the settlement would be approximately \$10 million.

I say again, if that is how my comments were interpreted, they were misinterpreted and that is why I said I was misquoted when I suggested it would cost \$10 million.

Mr. Philip: You are not suggesting the comments that were replayed on CBC radio last week in juxtaposition to your denying in the committee that you were misquoted, you are not denying that you in fact said those words.

Hon. Mr. Sorbara: I think in the committee two weeks ago I did not deny using the figure of \$10 million in discussing the issue, but I do not think I ever suggested at any time we had some sort of legal view that the ultimate value of the settlement would be \$10 million. I used the number in a hyperbolic fashion to make a point that in our expectation that settlement would be a court determined settlement or another way of proceeding may well be more expensive than the very expensive package that was proposed and approved by the Board of Internal Economy.

Mr. Philip: We do not have a Hansard and I have a different interpretation of what you said two weeks ago. Taking up your last point, you did in fact advise the government or you did in fact state publicly that it would cost a lot more than the settlement because Mr. Lewis would in some way be successful in a wrongful dismissal suit.

Hon. Mr. Sorbara: No, I did not advise the government at all in any of these matters.

Mr. Philip: You were the person speaking on behalf of the government.

Hon. Mr. Sorbara: I was the person speaking on behalf of the Board of Internal Economy in conjunction with a decision the Board of Internal Economy made. When the question was put to me by the press, "How can you justify this settlement?" I expressed the view that I thought it was a package that was generous in the extreme but that any other course may well have been even more expensive. I was not at that time giving advice; I was reflecting on why it was that I, as a member of the Board of Internal Economy, thought it appropriate to move as a motion the recommendation that was before the board.

Mr. Philip: The Board of Internal Economy is controlled by the government.

Hon. Mr. Sorbara: That is an interesting view of it. The board--

Mr. Philip: You have more members than anybody else. All the government members voted for this platinum handshake so obviously all members were speaking for the government. If the government did not view that, I am sure the Liberal members on the committee, yourself included as a member of the cabinet, would not have voted for or proposed that particular settlement.

Hon. Mr. Sorbara: It is an interesting view of how the board works. It is not one that I adhere to. The responsibility of the board, I think, is not simply to confirm recommendations presented by the government. For example, we have matters coming before us from the Provincial Auditor, from the Ombudsman, from the government.

Mr. Philip: Are you suggesting that the government disagreed with--

Hon. Mr. Sorbara: I am not suggesting that at all.

Mr. Philip: So it did agree.

Hon. Mr. Sorbara: Certainly.

10:30

Mr. Philip: So it was the government's position.

Hon. Mr. Sorbara: It was the government's position that this recommendation ought to go before the board.

Mr. Philip: And that if the recommendation were not implemented, it would cost more than the settlement?

Hon. Mr. Sorbara: I am not sure if that was the government's position. That was a view that I expressed.

Mr. Philip: You were the government member on the board voting for this decision. You had to have some reason for voting for this decision. I assume you did not decide to play Santa Claus because Mr. Lewis was a nice, elderly gentleman who should get a large package at the taxpayers' expense.

Hon. Mr. Sorbara: That is a safe assumption.

Mr. Philip: What? That he was a nice, elderly gentleman?

Hon. Mr. Sorbara: That I did not make my decision based on those assumptions.

Mr. Philip: I will not even bother asking that question. Did you, in fact, not represent the views of the government when you made that decision or are you saying that the government had no recommendations or had no position when that decision was made?

Hon. Mr. Sorbara: What I did as one of the government members of the board is move the recommendation. I proposed the motion that the board adopt the recommendation before it. The fact is the items that were in that package were presented to the board based on negotiations that had taken place between the government, broadly speaking, and Mr. Lewis.

Mr. Philip: It was not broadly speaking; it was the Premier's office that made the recommendation, was it not?

Hon. Mr. Sorbara: My understanding was that the Premier's office, but more particularly Mr. Nixon's office had carriage of the negotiations that went on.

Mr. Philip: So it was the government position and the government position was, either we give this money or we are going to have a settlement that is going to be larger than the amount we are giving. Is that correct?

Hon. Mr. Sorbara: The government position was to propose the recommendation. I cannot tell you it was the government position that it was going to cost even more. It was a suggestion that I made and one of the reasons I felt, although the package was generous, it ought to be moved. I did not do that so much as a government member, but I did it in conjunction with my responsibilities on the Board of Internal Economy.

Mr. Philip: Mr. Sorbara, you are spending \$2 million. You had to have reasons for it, and I cannot believe Bob Nixon would allow you to spend \$2 million unless he had some reasons that he shared with you or at least that you talked about. To try to say that somehow you as an individual member decided on your own that this was a good idea and that the government had nothing to do with the reasons you wanted to spend \$2 million, frankly I think that lacks credibility.

Hon. Mr. Sorbara: I am sorry if I am not making myself clear. My understanding was that the recommendations that were before the board resulted from very intensive negotiations that went on between primarily Mr. Nixon's office and the Clerk and that was the bottom line as far as those negotiations. The negotiations were at a conclusion and the results of those negotiations between the government and Mr. Lewis were put before the board. It was on that basis, satisfied that those negotiations had gone as far as they could, I was prepared to move the recommendation at the board.

Mr. Philip: Another bottom line could have been "Mr. Lewis, I am sorry, we cannot come to an agreement and therefore you can take whatever action you want." You did not take that bottom line so it must have been the government's position that it had to either give in to these demands or that it would have cost them more. That was the view you expressed publicly and you say in the Board of Internal Economy.

Let me deal with the concept that it would cost you more. Are you aware of the testimony of David Harris, who is a recognized leading author on wrongful dismissal, that took place--

Hon. Mr. Sorbara: I have not read the Hansard. I did have the advantage of watching some of it electronically, but I did not follow the entire hearing.

Mr. Philip: How do you respond to his charge that it is questionable whether the crown can be sued for wrongful dismissal?

Hon. Mr. Sorbara: He is a legal expert on that matter. I am not going to question his judgement.

Mr. Philip: How do you respond to his contention that had the government introduced the motion indicating that Mr. Lewis was being dismissed for just cause and that were such a motion passed it would be inconceivable for any court to question the decision, whether or not cause had been proved in the Legislature or not?

Mr. Mancini: Mr. Chairman, I am not so sure that is exactly what he said.

Hon. Mr. Sorbara: Hold on a second. I watched that part of it and I question whether Mr. Harris said that. I think what he said was that this was a wholly different case. Certainly, his expertise is in the private sector. He said it would have to be analysed on a completely different basis. I do recall him saying he would wonder whether a legislature's determination of cause could be challenged. I think he wondered about that. I do not think he presented himself here as a constitutional expert or an expert on issues related to the authority of the Legislature as the supreme lawmaker in the province.

He did mention something which also impacts on the situation, and that is the potential impact of the charter, which qualifies a provincial legislature's right to do what it likes.

Mr. Philip: I think he used the words "would be charged," which is different than "could." Whether or not a judge would overrule a decision by the highest court in the province, namely, the Ontario Legislature--

Hon. Mr. Sorbara: I am not sure the Ontario Legislature is the highest court in the province.

Mr. Philip: I am sorry, parliament is the highest court by tradition.

Hon. Mr. Sorbara: It is subject to the authority under the Bill of Rights and the Charter of Rights now for a court in Ontario, and certainly the Supreme Court of Canada, to qualify parliament's ability to make law.

Mr. Philip: How do you react then that even if Mr. Lewis had a lifelong contract--and there is considerable doubt that he did--that there is some legal argument to be made that under the Master and Servant Act no lifelong contract be longer than nine and a half years.

Hon. Mr. Sorbara: I heard a bit of that testimony from Mr. Harris. I would not challenge his expertise at all. One would have to consider how the provisions in subsection 74(2) of the act qualifies the Master and Servant Act. Both Mr. Harris and I as lawyers would agree that that would be something that a court would decide--which particular statute had precedence. I do not think the Master and Servant Act suggests that where there is ambiguity or conflict between two statutes, the Master and Servant Act prevails, but I may be wrong; I have not read the entire statute.

Mr. Philip: It is fairly clear what he said. He said that, in his opinion, under any cases that he knew the Master and Servant Act would clearly prevail and that no lifelong contract would be for more than nine and a half years.

Mr. Mancini: That is not correct either.

Mr. Callahan: That is not correct at all.

Mr. Chairman: Is this a point of order?

Mr. Callahan: On a point of correction, if there is such a thing: If the member is going to quote, he should quote accurately. Unfortunately, we do not have the Instant Hansards available, but he is putting out statements I do not recall.

Mr. Philip: I am sorry then, because before I wrote down these things, I checked them out. I am sure that the member has not. If we wish, I would be happy to call Mr. Harris back and verify my statements on each of the three items, if he would like that to happen.

Mr. Mancini: That might have to be a valid point.

Hon. Mr. Sorbara: Even assuming that that is what Mr. Harris said, he qualified it. I think Mr. Harris would agree that the statute in question has not been litigated. No court has ruled on its impact juxtaposed to the Master and Servant Act. I think he would acknowledge that much. In addition, while we characterize Mr. Lewis's position as the Clerk as a lifelong contract and then we think about contract law--

Mr. Wildman: As defined by his law?

Hon. Mr. Sorbara: --it is not so much a contract as the termination of tenure based on statute. Until the effect of that provision is judged by a court, it is difficult for us here--whether it is Mr. Harris as a witness or I as a witness or this committee--to rule definitively on the impact. That is the court's responsibility.

Mr. Philip: If it was so difficult, why did you make a decision which you rationalized by saying that it would cost more than the settlement? Do you not consider that irresponsible? You gave away \$2 million.

Hon. Mr. Sorbara: I am not sure I gave away \$2 million. You throw around the \$2-million figure. You have accused me of throwing around a \$10-million figure. I was presented with a legislative responsibility in the Board of Internal Economy to consider a recommendation. My colleagues on the board in the New Democratic Party and in the Conservative Party were not prepared to consider the recommendation or really discuss it at any length. I had to exercise my responsibility as a board member to consider whether or not I was going to move and support the recommendation that was before the board.

10:40

Prior to doing so, I personally consulted Mr. Lewis to ensure that we were in a situation where this really was a package that was acceptable to him and that there was no indication whatever on his part that he would move off that one iota.

Mr. Philip: It never occurred to you to seek legal counsel other than your own legal opinions before you gave away the store.

Hon. Mr. Sorbara: No, and it may well be that periodically the board does seek legal counsel. In my short tenure there, it has not done so. It relies on the officials who serve the board. I was coming to the recommendation from the perspective that a committee of the Legislature had unanimously agreed that the Clerk should be replaced and a committee of the Legislature agreed unanimously on who the new Clerk should be. I thought it appropriate under the circumstances to support the recommendation that was before the board.

Mr. Philip: I find your actions absolutely irresponsible.

Hon. Mr. Sorbara: Well, that is what we are here for. We have differing opinions on these things.

Mr. Philip: I think that the taxpayers find your actions irresponsible. From the phone calls I have received and from the conversations I have had in the public, you have gone and given away the store without any kind of legal opinion as to whether or not the taxpayers' rights could be protected legally or whether Mr. Lewis had any legal arguments for the exorbitant package. While you are doing that you say you cannot give a decent package to senior citizens in this province.

Hon. Mr. Sorbara: I hesitate to bring into this committee here the debates that are going on in the Legislature currently. I have said right from the outset that the package is generous in the extreme. Certainly, I have had as many phone calls from my constituents saying to me, "My goodness, how come you provided such a luxurious package to Mr. Lewis?" I have said to my constituents just about what I have said to you here today. I pretty much held my nose and proceeded.

Mr. Philip: I will bet they are as convinced as I am.

Mr. Mancini: I want to make a couple of points, not so much to question my colleague, but the figure of \$2 million has been thrown around and the issue of pensions for seniors and all this stuff has been brought in. I want to make sure that the members are aware that I do not think that there is a single person on this committee, not one, who would say that Mr. Lewis is not entitled to a deputy minister's pension. I have not heard one person say that.

I have not heard one person say that he was not entitled to those sick days he accumulated. The matter of contention that I have heard is whether or not Mr. Lewis should have been given an extra \$31,500 per year to finish writing his book.

Mr. Philip: A car and an office and a limousine and a chauffeur.

Mr. Mancini: I am getting there. Just a minute, Mr. Philip. The problem of the book was brought forward by my colleague from Algoma (Mr. Wildman). I think he enlightened a lot of members about what was going on. The other costs associated with the settlement were a secretary, cost for the office, which was assessed on some basis by the government, and use of the government car pool when and if he needed it.

I want to bring forward another thing that has not really been touched

upon a great deal by my colleague from--are you from Etobicoke-Rexdale or are you from Etobicoke? I am not sure. I keep getting different documents.

Mr. Philip: Etobicoke until the next election and then it is Etobicoke-Rexdale.

Mr. Mancini: My colleague from Etobicoke has never once referred to the fact that the salary for writing the book and the other costs associated with that did not necessarily have to be approved for a 10-year period. It could have been approved on a year-by-year basis. Mr. Lewis, having to go before the Board of Internal Economy on a regular basis to say, "I need more money to write my book," could have been turned down at any given time. He could have been turned down after 12 or 18 months.

It has to be made very clear what the issue of contention is and the absolute fact that Mr. Lewis was not guaranteed 10 years times \$31,000 for writing his book or 10 years times \$50,000 for the cost of the office or the use of the car pool. That has to be made very clear. I would like to hear from any honourable member on this committee who wishes to dispute the fact that he is entitled or not entitled to the deputy minister's salary and/or those sick days accumulated under law, which were given to him as a benefit.

Hon. Mr. Sorbara: May I just comment on that? From the perspective of the Board of Internal Economy and our review of the recommendations, Mr. Mancini's comments are entirely appropriate. There was a statutory entitlement to some \$94,000 in sick leave benefits--I am not sure exactly what they call the days. Because of the unusual circumstances that Mr. Lewis found himself in, he did not, by strict interpretation of the statute, qualify for the pension of a deputy minister, even though he had the rank and status of a deputy minister. We all thought it was appropriate that it come about.

The issue we were facing was a much smaller one, the incremental package. While my friend from Etobicoke suggests that I am outrageous for using a figure of \$10 million, the same might be said of using the figure of \$2 million. All of us around here have extremely generous retirement packages.

Mr. Wildman: Not all of ours are quite as generous as Dennis Timbrell's.

Hon. Mr. Sorbara: I do not know about his package, but apparently if you are around here 15 years, it is not bad. Mr. Lewis has been around for 39 years or so. The issue got caught up in the public and, frankly, there was a public sense that somehow Mr. Lewis should be summarily dismissed and not get a dime. That is the kind of thing I was getting from my constituents: "My goodness, just throw the guy out in the street. He does not deserve anything for demanding that much."

The reality of it is, consistent with the provisions of government retirement around here, he was entitled to a very good deal of what he got anyway. When the discussion arose, it was in the sense, "Should he get nothing or should he get this outrageous \$2-million package?" We have played politics with this and it is fair game; this is a political forum.

Mr. Wildman: I want to indicate sincerely that I am not playing politics with this; neither am I disputing Mr. Lewis's entitlement to the equivalent of a deputy minister's pension, nor his entitlement to accumulated sick leave and so on.

Hon. Mr. Sorbara: That was not the position of your party at the board.

Mr. Wildman: Our party took the position that there should be some sort of determination as to what legal obligations the House had.

Hon. Mr. Sorbara: No, it was not that there should be some sort of determination.

Mr. Wildman: We voted, and I support the fact, against the exorbitant package which was offered. I would like to return to the issue of the book, which I raised earlier and Mr. Mancini raised. Many retired public servants, as well as people in the private sector, write their memoirs or, on other occasions, write manuals on the administration or, in this case, how the Legislative Assembly works, but I do not know of many occasions where the former employer feels obligated to pay attendance to a retired employee in order for that person to do that.

10:50

Mr. Mancini: I just want to tell my colleague from Algoma that it is not unusual, and it has happened in the past, where leaders of all three federal political parties received funds to work at certain universities.

Mr. Philip: What kind of interruption is that?

Mr. Mancini: I asked and he agreed.

Mr. Chairman: All right, Mr. Mancini, continue.

Mr. Wildman: I yielded the floor. Go ahead.

Mr. Mancini: I just want to tell my colleague from Algoma, who gladly yielded the floor to me, that it has been the practice over the last 10 or 15 years that leaders of all federal political parties have received assistance and have worked right in the universities, where they have been given staff and office space and whatever else they needed in order to write memoirs. I just want to make sure he is aware of that.

Mr. Wildman: I am aware of that, but I do not think that really has much relevance, frankly, because, first off, Mr. Lewis was not a leader of a political party. Second, he was not working in a university setting. I do not know of any university that has offered a position, whether it be a writer in residence or professorship. I am sure Mr. Lewis might be quite qualified to lecture in political science at the university level or even to write, but he has not.

What we have here is a suggestion that in some way the taxpayers of Ontario have some sort of obligation to help Mr. Lewis complete a book that he was supposedly going to have completed in 1967. Why on earth did the members of the Board of Internal Economy who voted for this believe that they and the taxpayers had some obligation to pay Mr. Lewis so that he could complete his book?

Hon. Mr. Sorbara: Mr. Wildman, I was not a party to the negotiations that went on, but I was satisfied that within the context of negotiations, that was one of the issues which was discussed and resolved.

Mr. Wildman: I understand we may have the Treasurer (Mr. Nixon) before the committee. Is that possible? I am sure he was involved and certainly his staff was involved in the negotiations and I would be interested in what he has to say about that.

Hon. Mr. Sorbara: It is safe to say that it was extremely important within those negotiations for Mr. Lewis to have a continuing association with the place that he knows and loves very much. I was not involved with the negotiations, but I would have assumed that was crucial to the exercise.

Mr. Wildman: That sounds very compassionate, but the only other example I can think of that in any way relates to that would be the case of Stanley Knowles in Ottawa, and he was not being paid a cent. I do not think he would--I am sure, knowing Stanley--think he should be paid anything. Yet everyone concerned agreed that a person of his stature, someone who is acknowledged as a leading expert on parliamentary procedure, who had spent his life in the House of Commons, and at the political level, would be an asset to the House of Commons and to assist the Clerk.

Very few people would dispute the generous decision of the members of the House of Commons and the government of the day to request that Mr. Knowles be able to sit at the table and assist the Clerk in any way he could. The point is that he is not being paid. I do not think anybody here would dispute that Mr. Lewis has served this assembly for many years and loves the place. I suppose on that basis you might argue that perhaps he should get an office or have space in the building, but why should he be paid to write a book?

Mr. Mancini: You think he should have his office space?

Mr. Wildman: I do not know. It is beyond me why on earth he should be paid to write a book. Particularly if that book is going to be sold and he may at some future date make something from the royalties of the book.

Hon. Mr. Sorbara: Again, Mr. Wildman, I was not an active participant in the negotiations, but I think that was simply something that was resolved in the context of those negotiations. I should tell you, because I think it relates to your question and it certainly relates to the questions that Mr. Philip was asking previously, because his party had thrown around the figure of \$2 million, I see now figures have been provided for me suggesting that the package approved by the Board of Internal Economy, fully costed out over a period of 10 years, is \$1.13 million.

Had we simply decided not to hire a new Clerk and have Mr. Lewis continue in his job for a period of 10 years, what he would have earned without any cost-of-living increase in his salary, would have been \$1,598,000. So I make the point that you say, "Why should he be paid to write a book?" It was something that was determined within the context of those negotiations and the consideration of all of the matters relating to the retirement package, and in particular, Mr. Lewis's great affiliation with this place and his burning desire to stay a part of it. Those were the recommendations that were presented.

Mr. Wildman: I want to raise two short questions.

Mr. Chairman: All right, I want to remind members that Mr. Nixon was scheduled for 10:45 a.m. He is available on very short notice. Could we deal with this then?

Hon. Mr. Sorbara: He is a much more charming witness than I am.

Mr. Wildman: I would like to--here he is, speak of the devil--ask two short questions.

Hon. Mr. Sorbara: Do you see what I mean?

Mr. Wildman: Diablo knows his name.

Mr. Martel: He knows his name--the devil.

Mr. Wildman: To follow my previous analogy, I am certain the accommodations available to Mr. Knowles on Parliament Hill are far more modest than what Mr. Lewis believed he should be entitled to. I understand the argument that he used was that some of the research he had been doing off and on for his book was in the computer; he wanted access to the word processor and to secretarial help; that is, people who had been in his office and had been helping him before. Is it your view that if--underline the word "if"--Mr. Lewis should have been given space here, his demands with regard to space and the location of the office were reasonable?

Hon. Mr. Sorbara: Again, Mr. Wildman, I thought it inappropriate for me to question particular elements of the package; that is, at the board to say, "Well, yeah, we understand the need for space, but let us work out where that should be." There was no particular space allocation within the package; it was provided that there would be an office. I would assume that office would accommodate Mr. Lewis appropriately. I was told that originally he wanted an office right beside the incoming Clerk, and that was not in the cards.

The package that we had, if I recall correctly, did not say room 230, west wing, or something like that; it just said "an office." I did not know whether that was going to be in the Whitney Block or at 555 Yonge Street or wherever. In conjunction with the so-called retirement, because Mr. Lewis was envisioned as continuing in another capacity, stepping aside from the Clerk's job, an office was going to be provided for the period of time he was continuing the work that was agreed upon in the proposed settlement.

Mr. Wildman: Okay. I understand there is a legend about this place that there is another eminence that stalks the upper halls here because he loves it and has apparently spent many years here.

11:00

Mr. Callahan: Is that the ghost?

Mr. Wildman: Yes. I am just wondering what salary the ghost gets.

Mr. Callahan: I have never seen him. He has got to show up to get his pay.

Mr. Ferraro: Stop talking about Eddie Sargent.

Hon. Mr. Sorbara: I do not know about ghosts, but I do know that Mr. Lewis's tenure as the Clerk of the Legislature and the ending of that tenure brings to an end a tradition that, while we are changing it, is one that lives in him. His father died in his place, and I think were you to ask Mr. Lewis, he would have preferred to die in his place, and carry on to the end of life that tradition.

I do not think that was the determination of the standing committee on the Legislative Assembly that was not going to happen, that there was going to be a new Clerk, and it was our responsibility within the Board of Internal Economy to consider a recommendation to bring that tradition to an end.

Mr. Callahan: Briefly, Mr. Chairman, I am very pleased to see that all honourable members have agreed, in fairness, that the Clerk is certainly entitled to the pension of a deputy minister. However, just to go back to Mr. Philip's comments, and it is too bad he--

Hon. Mr. Sorbara: That is not the position of all parties in the Board of Internal Economy.

Mr. Callahan: It is too bad Mr. Philip is not here. I guess he is outside, but I got the impression when he was examining Mr. Harris that he was raising the absolutely unfair approach that the Legislature would just at a whim decide to say it was just cause, whether there was or there was not, and discharge him by an act of the Legislature. I think that would be outrageous.

Mr. Wildman: I have a point of order. Earlier, Mr. Callahan took my colleague to task for quoting Mr. Harris in a way that Mr. Callahan believes was not quite accurate, and I would simply point out to you that I think Mr. Callahan is indulging in exactly the same thing.

My colleague from Etobicoke in his questioning of Mr. Harris was asking, in the hypothetical, that if we were put in a position, because of the intransigence of the former Clerk, of having to dismiss the Clerk, then what were the legal options? That was the context of those questions.

Mr. Chairman: I want to encourage all members to try to eliminate these kinds of debates. We have a tight schedule today. Let us get on with it.

Mr. Callahan: Okay, he simply invited Mr. Harris to speculate on that. I think that would be absolutely outrageous. No fair Legislature would ever do that.

The final thing was that we went through--in the last hearing, with Mr. Harris as the expert that Mr. Philip had wanted to come here and testify--the lengthy procedure that would have at a minimum taken, had the matter gone to litigation, I think the outside figure was six years to finally conclude the thing and perhaps even a greater outside figure than that. Therefore, I think really what was going on was a fair attempt to negotiate a settlement to avoid the necessity of all that. Those are the only comments I would make.

Mr. Gillies: Very briefly, I think this exercise has been very useful and I am glad we did it, but my understanding--perhaps Mr. Sorbara could confirm it--is that the position our party took in the Board of Internal Economy was that the Clerk had the rank and stature of a deputy minister, a long-serving deputy minister, and that we felt he should be entitled to the same retirement benefits that a deputy of similar experience and tenure would receive.

With that in mind, while I think this has been very useful and I am glad the minister appeared, I will be particularly interested to hear from Mr. Nixon as to what the current state of negotiations is, and how far they are going down the road to, in fact, achieving a package for the retired Clerk which was in fact of that magnitude.

Mr. Wildman: I would like to hear about the history of--

Hon. Mr. Sorbara: Would you say the warm-up act has run its course and, thanks very much, Greg, but the star has appeared?

Ms. Fish: Or words to that effect.

Mr. Gillies: Not at all.

Hon. Mr. Sorbara: Just on your comment, Mr. Gillies, I should say that while you may have thought that was your party's position, it certainly was not your party's position in the Board of Internal Economy.

Mr. Gillies: Can you tell us what was? What is your interpretation? My understanding is that we always stood by a package for the Clerk similar to that of a deputy minister, because that is his rank.

Hon. Mr. Sorbara: I guess in a court this is hearsay and you should call your own member; I am not even sure whether I should be doing this. My understanding of your party's position on the Board of Internal Economy was that we simply will not consider any of this until we have a full investigation as to how we got to this point. In the face of that, my sense was that something had to be done.

Mr. Chairman: Nothing further?

Hon. Mr. Sorbara: Nor was it the position of the New Democratic Party, by the way, that he should get the pension of a full deputy minister. The understanding I had of the position of the NDP is that Mr. Lewis should be punished for asking for such an "outrageous settlement," as described by the member there, who felt he should be given the strict legal entitlement and not one penny more. That is not the normal pension of a deputy minister.

Mr. Wildman: With respect, if we had not had such outrageous demands, we might not have had the same reaction.

Hon. Mr. Sorbara: I know, but I was very surprised to hear that because I often thought your party approached these things with reasonableness in the face of rather heated demands. There are heated demands that go on in union negotiations and you do not punish people because they make rather outrageous and heated demands.

Mr. Philip: However, is it not reasonable that when someone comes in with an unreasonable demand you counteract with something similarly unreasonable so that you can enter into some kind of dialogue?

Mr. Chairman: I am going to terminate this at this stage. I think we are running over a lot of the same ground. We have another witness waiting.

Mr. Martel: There is a longer history than my friend pretends is there. The Tories wanted to dump the old man, too, long before the last election. In 1980, 1981, 1982, 1983--

Mr. Chairman: Mr. Sorbara, thank you very much for appearing before the committee on two occasions, We appreciate your assistance.

Hon. Mr. Sorbara: I hate to leave.

Mr. Chairman: Mr. Nixon, would you like to come forward, please? Thank you very much for appearing before the committee. Do you have any comments at the outset before we get into some questions?

Hon. Mr. Nixon: No, Mr. Chairman.

Mr. Philip: Mr. Nixon, have you or anyone else in the government had any dialogue or negotiations with Mr. Lewis since this matter was passed by the Board of Internal Economy?

Hon. Mr. Nixon: Lawyers representing the government have been in communication with Mr. Lewis's lawyer.

Mr. Philip: Does that mean you are negotiating a more reasonable settlement?

Hon. Mr. Nixon: I believe there is an agreement on a more reasonable settlement.

Mr. Philip: Can you tell us the contents of that agreement?

Hon. Mr. Nixon: It is contained in a letter addressed to Mr. Speaker, signed by the former Clerk. I spoke to the Speaker just a few moments ago and he is convening a meeting of the Board of Internal Economy on Monday in which this will be discussed and we hope approved unanimously.

Under those circumstances, I do not think it is appropriate for me to talk about the contents. That is inconvenient for the committee. On the other hand, it is the responsibility of Mr. Speaker and the board.

Mr. Philip: I accept that. Is it fair to say, though, that since there has been public speculation that he would at least be offered a deputy minister level pension, the agreement or the proposal is "nothing in excess of that?"

Hon. Mr. Nixon: The former Clerk had deputy minister status for many years and it would be reasonable to expect that the pension payable would be based on many years of service as a deputy minister, although one of the difficulties was that when his service went past the age of 65 there were no contributions made, so in order to make a pension payable of that nature, an annuity would have to be purchased, with the approval of the Legislature, by way of supplementary estimate.

Mr. Philip: Is it fair to say that the new proposal is substantially less expensive than the old proposal?

Hon. Mr. Nixon: Yes.

Mr. Philip: At the risk of irritating the Speaker, I will not pursue what the word "substantial" means. I am pleased to hear that a more reasonable approach has been reached. It says something for the value of parliamentary democracy, I guess.

Mr. Nixon, when the original decision to give what I think even you would agree was an exorbitant settlement to Mr. Lewis, was there any legal opinion sought as to whether or not Mr. Lewis would have the possibility of a successful suit for wrongful dismissal were you not to agree to these exorbitant demands?

11:10

Hon. Mr. Nixon: The review from the legal authorities was that under the statutes and regulations, Mr. Lewis had entitlement to his job for life. I was aware of this, as were most members. The idea was that the Clerk be protected against inappropriate dismissal or harassment. Those protections proved to be very effective.

Mr. Philip: Are you aware of the opinion expressed by David Harris, who is the recognized authority on wrongful dismissal? He says that "life" as interpreted under the Master and Servant Act means nine and a half years.

Hon. Mr. Nixon: Fortunately, I have never had anything to do with David Harris nor have I heard of him before.

Mr. Philip: I am sure you would agree that Mr. Lewis served more than nine and a half years.

Where did you obtain the legal opinions?

Hon. Mr. Nixon: I discussed it with the Attorney General (Mr. Scott). All of the lawyers in the government are employed through the Attorney General's office. It was also discussed with the head of the legal department in the Treasury.

Mr. Philip: Did Blenus Wright give the legal opinion?

Hon. Mr. Nixon: No, not that I am aware of.

Mr. Philip: So he cannot be hanged for this legal opinion, even though he may be for some other legal opinions that have been given to your government.

Mr. Gillies: He is still swinging.

Mr. Philip: Can you tell us more specifically who gave you the legal opinions? The Attorney General's office is very large.

Hon. Mr. Nixon: I discussed it with the Attorney General and with Graham Stoodley.

Mr. Philip: Is either the Attorney General or Graham Stoodley a lawyer who has practised litigation law in the field of wrongful dismissal?

Hon. Mr. Nixon: No, but the Attorney General is the chief law officer of the crown. My consultations were not formally House leader to chief law officer. They were the kind of discussions that would take place between seatmates in the Legislature, which we are.

Mr. Stoodley works not only with the Attorney General but also for me as Treasurer. I have a great deal of confidence in him and know him well personally, so we had some further discussions. He is the one who has been discussing this matter further with the representative of Mr. Lewis, the former Clerk.

Mr. Philip: Considering the amount of money involved, would it not have been reasonable to ask for a written legal opinion?

Hon. Mr. Nixon: That is a reasonable question. The way the circumstances evolved, I feel I was justified in taking my part of the scenario which fell to me.

Mr. Philip: That is an interesting answer but it did not answer my question. I asked whether you sought a written legal opinion. I got out of it that the answer--

Hon. Mr. Nixon: I got legal advice.

Mr. Philip: Did you receive a written legal opinion?

Hon. Mr. Nixon: Not per se, although there is a memo from Graham Stoodley that is printed.

Mr. Philip: Can you supply the committee with a copy of that memo?

Hon. Mr. Nixon: Yes, I will see you get one for your next meeting.

Mr. Philip: Considering the amount of money, does this not strike you as a rather casual way to have handled this?

Hon. Mr. Nixon: It was a fairly sensitive matter. It did not occur to me that we would be faced with the situation of having the Legislature accept the resignation of the former Clerk or expecting that we had, having proper statements made in this connection in the Legislature and hearing from the former Clerk himself in the Legislature in well-chosen words, having a dinner for him, and then to realize after the Legislature had gone through a very useful process of selecting a new Clerk and having him about to arrive in town to take up his duties, that all of a sudden under the protection of the legislation and the regulations formerly passed, the former Clerk felt his services were not at an end unless his full pay were continued until his death.

Mr. Philip: It is a little like taking a guy for dinner and then having him put a lien on your car, is it not?

Hon. Mr. Nixon: I do not think a response to that is appropriate.

Mr. Philip: Is it fair to say that Mr. Lewis's letter of September 26 to Mr. Carman, which if you look at the last paragraph can only be interpreted as a threat or a challenge that things would be somewhat awkward for his successor and would put him "in a very embarrassing position"--I am using Mr. Lewis's direct words--put considerable pressure on you because of the possible disruption that Mr. Lewis could cause to the Legislature and to the new Clerk were he to hang around beyond the time that was expected?

Hon. Mr. Nixon: I found that prospect unacceptable. Realizing that the former Clerk clearly had legal entitlement to the job for life, I thought it appropriate that we take the steps that you are aware of to see that the vacancy occurred. I felt it absolutely imperative that the new Clerk, who had been properly selected for the first time by a competitive situation involving a committee of the House and had been selected for his experience and his abilities proved, take up his new duties without any awkwardness or difficulty.

Mr. Philip: There is very little doubt that Mr. Lewis had a clear understanding when he wrote that letter of September 26 and considering that he did not have an appointment per se for life but could have been dismissed at the pleasure of the Legislature for cause, did you not consider that the threat made in his letter of September 26 would be cause?

Hon. Mr. Nixon: No, I did not. I felt that reasonableness and moderation would eventually prevail, that Mr. Lewis, having served long and well and having reached the age of 75, would retire from his job and another very competent person would take his place and that suitable pension provisions would be arrived at. With moderate people reasonably understanding our process, I thought that would occur. In fact, I believe it will occur on Monday, and that is about three months later than I would have wished.

Mr. Philip: You have not answered my question. Perhaps I will rephrase it.

Hon. Mr. Nixon: No, I do not think it would have been appropriate cause, because the ramifications of deeming it appropriate cause were such that I was not prepared to recommend they be undertaken.

Mr. Philip: The possibility of causing an embarrassment to the incumbent and of causing a disruption to the Legislature thereby would not be considered cause for dismissal, in your opinion?

Hon. Mr. Nixon: The disruption and the way to describe it would take place only if I did consider it cause, if that is not too convoluted.

Mr. Philip: It is somewhat convoluted. I recognize the position you were in. You had a sticky wicket and you gave in to him. That is basically what happened, is it not?

Hon. Mr. Nixon: The alternative, in my view, would have been too destructive for a new process that we, as a new government, had undertaken with the rest of the members of the House in renovating our rules and our chamber and our approach to the business of the Legislature. It was our thought that this would be served well by a change in the Clerkship and we had undertaken to do that.

The change to the new Clerk has occurred beneficially for our House and for our democratic system here. The difficulties in the retirement arrangements for the former Clerk are going to be worked out. I sincerely hope and have reason to believe all representatives of the Board of Internal Economy are prepared to support the alternative arrangements.

11:20

Mr. Philip: I find your last answer absolutely fascinating. It takes us so much closer to the truth of why the government caved in than the reasons that have been given. Up until now, we have been given the reason that it would cost the taxpayer so much more if this man sued. That is Mr. Sorbara's line and so forth.

Hon. Mr. Nixon: Let me interject to say that I believe that what he has said is entirely correct. If there is some implication that all the facts were not known, I do not believe that is the case.

Mr. Philip: Let me submit that the line taken by the government up until what you have just said has been, "It was going to cost us too much money if we had done anything otherwise." Now what I am hearing is, "If we had not given in to what he demanded, the process of parliament would have been hurt by this man who would stay around and cause a disruption." That is what I hear from your last statement. Did I hear correctly?

Hon. Mr. Nixon: I wanted the transition to the new Clerk and the utilization of the new rules and--what I say may not be accepted by all members of the committee--a new spirit to the working of the Legislature, predicated to some extent on the position of the government party in the House. That was worth allowing this transition to take place without any dislocation to the responsibility and the work of the new Clerk. I believe it did occur that way.

Mr. Philip: Let me suggest to you that in the light of the evidence we had last week from Mr. Harris, who is the expert in the field, and from any other litigation lawyer or labour lawyer I have talked to, your original argument that it would cost too much money does not stand up. What you had in fact, and what you have indicated you had, was an embarrassing situation; that is why you gave in to Mr. Lewis, to get rid of that embarrassing situation, not because it would cost the taxpayers so much more money if you did not settle.

Hon. Mr. Nixon: My view was that moderation would prevail and that an appropriate settlement would be arrived at. I have every reason to believe that will occur. We have not had to pay Mr. Harris a cent, although perhaps this committee will.

Mr. Philip: Mr. Harris was kind enough to say that he thought his--

Mr. Mancini: He was looking for work.

Mr. Philip: That is an unfair slant on somebody who is obviously a lot more competent lawyer than Mr. Mancini is.

Mr. Mancini: All lawyers are looking for work, as far as I know.

Mr. Wildman: He came here of his own volition and volunteered--

Mr. Philip: Mr. Harris came here of his own volition. He is the recognized expert in the field. He suggested that he considered it a public duty to enlighten the public in view of the misinformation that was given by Mr. Sorbara in his legal opinions. He did not accept any money.

Hon. Mr. Nixon: I do not believe you have received any misinformation.

Mr. Philip: Are you suggesting it would have cost \$10 million?

Hon. Mr. Nixon: No. I think I have heard Mr. Sorbara say that he did not say that, but I cannot get into that argument.

Mr. Philip: You cannot believe it; so I should not believe--

Hon. Mr. Nixon: I also think it is quite salutary to realize that not everything has to be settled in court or before the bar of the Legislature. With even the best legal advice that can be obtained, good judgement and moderation are going to work this out and everything is going to be okay.

Mr. Philip: Thanks to the opposition saying "no" and telling the government to go back to the negotiation table, a lot of money will be saved; we will be looking forward to hearing how much on Monday.

Hon. Mr. Nixon: There is political credit in this, and if you want to have it, Mr. Philip, you have got it.

Mr. Philip: I share it with the Conservative members on the same committee.

Mr. Callahan: That is nice of you.

Mr. G. I. Miller: Put his picture on the front of--

Mr. Callahan: We want an honorary LLM for you.

Mr. Chairman: Let us have some order, please. Any further questions from other members?

Mr. Callahan: Just a commentary on Mr. Harris. When I was examining Mr. Harris, I think his statement was that he had written a book and that several people were involved in wrongful dismissal.

Mr. Wildman: He listed the others.

Mr. Callahan: We also went through a scenario on the hypothesis that it was a lifetime engagement; that if it were to go to the courts, a judge would look at that in terms of the life expectancy of the gentleman times his salary as the appropriate measure of damages plus legal costs plus prejudgement interest plus the appeals from the trial to the Court of Appeal to the Supreme Court of Canada potentially. That has to be recognized as well.

Mr. Philip: Do you recognize what the life expectancy is actuarially?

Mr. Callahan: Yes.

Mr. Philip: It is two months--

Mr. Chairman: I again remind members that we have a witness before us. Let us not get into these kinds of--

Mr. Callahan: I just wanted to clarify the Harris position, because it did go that far as well, and I think that is important to recognize.

Mr. Philip: That is what Harris said; the actuarial figure--

Mr. Chairman: Mr. Philip, please.

Mr. Gillies: As I said earlier, all that we see as important now in our party is that something be negotiated which is reasonable and a hell of a lot more acceptable to the members of this committee and to the members of the House and, we hope, in some measure to Mr. Lewis. I take some encouragement from the Treasurer (Mr. Nixon) telling us there will be a meeting on Monday. We hope something will be worked out.

Perhaps the only criticism I would level at the witness is that if the members of the House as a whole had accepted the "everything will be fine" theory from the Liberal government several months ago, the result would have been that the whole excessive package would be flowing to the retired Clerk. I am glad that the opposition parties drew attention to this and that something a heck of a lot more reasonable is going to be worked out.

This has been an embarrassing affair. To the extent that it has been embarrassing to the government, I take endless pleasure. To the extent that it causes embarrassment to Mr. Lewis, for whom I have a great deal of respect--and I believe our party feels he has served the Legislature, in the Treasurer's words, long and well--I regret that embarrassment. But I hope something reasonable and approximating his entitlement as a senior-ranking deputy minister will flow to him, because in my opinion that is what he should have gotten in the first place.

Mr. Wildman: I want to thank you, Mr. Nixon, for coming before the committee. I hope that, knowing me as a reasonable person, you will not misinterpret my questions, but I am going to ask them anyway. I want to go through some of the history of this as well as looking ahead to Monday.

As a senior member of the House and one who has acted as the House leader for your party for some time, could you share with us whether you are aware of any earlier discussions with regard to the retirement of the Clerk prior to the change of government?

Hon. Mr. Nixon: In a Legislature, many of these things are discussed in an informal way. Other than formal discussions, there were discussions before the change of government, yes.

Mr. Wildman: Were there discussions at that time about the possible difficulties that the wording of the legislation might present if Mr. Lewis were not amenable to retirement?

Hon. Mr. Nixon: No, I do not recall that. Mr. Lewis and his father, as has been mentioned in previous testimony, have served many years here. I expected, and I am now correct in that expectation, that he would go into an active retirement with a full deputy minister's pension. I did not expect anything other than that to occur. I do not think anybody did.

Mr. Wildman: I will not go any further into the question of whether the Conservative Party at some time might have been interested in seeing the retirement of the Clerk.

Mr. Martel: Can we pursue that?

Hon. Mr. Nixon: You can be a witness.

Mr. Martel: Yes, you might want to pursue that line a little bit further.

Mr. Wildman: Are you aware of any such discussions?

Hon. Mr. Nixon: I have already said there were informal discussions.

11:30

Mr. Wildman: In regard to the retirement package that was originally considered and passed by the Board of Internal Economy and what is being discussed now and what may result from the next meeting, if there is an annuity that is purchased to cover those years in which Mr. Lewis did not have contributions made subsequent to age 65, will that annuity be owned by the government?

Hon. Mr. Nixon: I guess so. I do not know.

Mr. Wildman: My question is, will Mr. Lewis own it or will the government own it and he will simply get the income from the interest?

Hon. Mr. Nixon: Yes, I guess I can answer that. As I understand it, he will get the appropriate monthly payment equivalent to a deputy minister's maximum pension and in that instance he would get the revenue from it and not have the principal.

Mr. Wildman: In regard to a senior deputy minister's pension and the benefits that accrue, is it normal for even a most senior public servant in this province to have access to garage services, office space and secretarial assistance subsequent to retirement?

Hon. Mr. Nixon: There are all sorts of retirement arrangements here that are entered into on the basis of continuing service in some way or another. For example, the present chairman of Ontario Hydro was the Deputy Treasurer, which is usually considered a senior position. So there are many of these arrangements.

Mr. Wildman: Are you suggesting Mr. Campbell's appointment to Hydro is part of his benefits from having retired from the public service?

Hon. Mr. Nixon: No. But the fact is that he used to be an active, serving deputy minister and has now got other duties. There are other examples I can think of.

Mr. Wildman: But surely his access to drivers and so on relates to his position with Hydro, not to his former position as Deputy Treasurer.

Hon. Mr. Nixon: I do not know about that.

Mr. Wildman: Talking about continuing service, would you consider the completion of a book that was originally supposed to be completed in 1967 to be continuing duties that would be of benefit to the public and to the Legislature and thus should be compensable?

Hon. Mr. Nixon: Yes. As a matter of fact, the board set up a nominal office called Clerk Emeritus, which simply means the senior clerk, and Mr. Lewis will have that position and will continue his writing.

I find it difficult to criticize people who undertake writing projects and do not get them finished in a period of time. I was actually working on a book about my own father's political life and it is not quite complete.

Mr. Wildman: You do not expect to have the public pay for your time while you are writing your book about your father?

Hon. Mr. Nixon: It may be good enough that the Treasury will want to buy it.

Mr. Wildman: If such a book is completed, is it anticipated that it will be printed and published by the Queen's Printer?

Hon. Mr. Nixon: Yes, and I would expect the book would be a very useful handbook in the democratic process and the history of the development of the parliamentary or legislative process here. Mr. Lewis is an intelligent person who has had lengthy service in this jurisdiction and he has been closely associated with legislatures across Canada and around the world.

Mr. Wildman: Can you tell me what your interpretation was of Mr. Lewis's speech in July before the House? Did you interpret his words, which you said earlier were carefully chosen, to be an acceptance of retirement?

Hon. Mr. Nixon: I did not think of anything other than that. I do not think I said "carefully chosen." I think I said "well chosen." "Carefully" implies that he was trying to say something with care. "Well chosen" means that as a person leaving an important office after a long period of time, he said the appropriate thing.

Mr. Wildman: But you did interpret it as being an acceptance of retirement?

Hon. Mr. Nixon: It did not occur to me otherwise.

Mr. Wildman: Were you taken by surprise when you received a call when you were in the Far East, I believe, from Mr. Carman, which indicated that Mr. Lewis was threatening not to leave his office?

Hon. Mr. Nixon: Yes.

Mr. Wildman: What action did you take or did you advise Mr. Carman to take to deal with what, I guess, you interpreted as a new situation?

Hon. Mr. Nixon: I was certainly aware of what I hesitate to call a legal opinion, but was an opinion that came from lawyers whom I trust, that he had ample justification to consider himself in possession of legal entitlement to the job for life, and were he to stand on that position, I saw no alternative but to continue his full salary pending further negotiations.

This was entered into on the basis of a judgement, good or bad; I consider it appropriate and I still do. The office would become vacant with no embarrassment for anybody, nothing hanging around to interfere with a new man, a new Clerk, coming here from outside entering into an important responsibility. I wanted him to do it with every possible advantage. I think we were successful in accomplishing that and that we are all very pleased with the results of this process.

Mr. Wildman: I think all members of the House would concur that we are pleased with the new Clerk, the way he has settled in and the work he is doing, and we would have preferred to see him begin his new position without embarrassment.

Hon. Mr. Nixon: And there has been none for him.

Mr. Wildman: Did you at that time consider it might be useful--I am talking about the time when you were notified by Mr. Carman of the difficulties that arose as a result of Mr. Lewis's letter--to seek a more more formal legal opinion about Mr. Lewis's rights and the obligations of the House and the government to him?

Hon. Mr. Nixon: I had what I considered to be sufficient advice. It is a bit gratuitous, but I think I can safely say now that I can foresee the way this is going to work out. I felt in the long run it would work out. I thought that the requirements as expressed by the former Clerk at the time were unreasonable, although they were based on his understanding, which I believe to be a correct understanding, of the legal requirements of the crown in this instance.

Mr. Wildman: Is it fair to say that you saw this as a storm cloud that, if you waited long enough, would pass?

Hon. Mr. Nixon: Yes.

Mr. Chairman: Any further questions or comments from members of the committee?

Mr. Pope: I have one final question. Can you explain to the committee why you wanted to end the relationship and terminate Mr. Lewis's role?

Mr. Martel: You might want to leave that alone.

Hon. Mr. Nixon: No. That is a good question.

Mr. Pope: It has been raised.

Hon. Mr. Nixon: I am not going to say I feel the idea was supported reasonably on all sides, because I have no documentation of that, although I could have some support from some of you. I think the appropriate answer is that the government felt that even though Mr. Lewis had served long and well--and, frankly, I always consider myself one of his professional admirers in our party, if that is the correct phrase; I have always had a high regard for him and still do--with a new approach, a new government--I am not sure that is relevant, but I put it in because I believe it is--new rules, the whole thing on television and with the advantage of simultaneous translation, which is highly regarded in Leeds and elsewhere, it was an appropriate time to make the change.

I believe Mr. Lewis considered himself, while a servant of the Legislature, to be employed by order in council with all that that implied. We also thought that the selection of the new Clerk by the appointment being referred to the standing committee on the Legislative Assembly, which is one of its first of many continuing new responsibilities, was an appropriate way to signal what we thought was a new era, a new approach to the Legislature, and that signal could be made.

11:40

I cannot give you a fuller answer than that. We thought it was an appropriate decision to be made. I felt it was not without some concurrence in general in the Legislature.

Mr. Mancini: I am the vice-chairman of the Legislative Assembly committee which chose the new Clerk. There are 11 members on our committee. Even though our process of choosing the clerk was lengthy and in many instances somewhat tedious because we had never gone through the process before, I cannot recall a single member from any party at any time raising a question as to why we were going through the procedure and whether we should rethink what we were doing. As a matter of fact, the Legislative Assembly committee and all its members were quite excited about what we were doing and we were very anxious to get on with our job.

Mr. Pope: I do not know if "excitement" is the proper interpretation to use, but that is another area of debate.

Mr. Wildman: There are many reasons for excitement.

Mr. Chairman: One thing before we wrap this up. Mr. Nixon, you made reference to a written memo from Graham Stoodley and the fact that you would provide that to us. We do have a memo in a package that Mr. Carmen provided to the committee that was directed to Elizabeth Aboud. I am wondering if that is there.

Hon. Mr. Nixon: Is it signed by Graham Stoodley?

Mr. Chairman: It is not signed. Pardon me, apparently it is signed, yes. It is a two-page memo.

Hon. Mr. Nixon: Signed by Graham Stoodley?

Mr. Chairman: Yes. It is in the package Mr. Carmen provided to the committee.

Hon. Mr. Nixon: That is it.

Mr. Chairman: Fine. I just wanted to clarify that.

Thank you very much for appearing before the committee today. We appreciate it.

The next order of business is the notice of motion by Mr. Philip. I want to bring to the committee's attention that we were contacted by Mr. MacKinnon from the Ontario Development Corp. He was aware that this matter was going to be discussed by the committee this morning and offered to be present, along with other officials from ODC--their names are listed on the agenda--to bring the committee up to speed on what has transpired since the last time they appeared before us with respect to the Wyda matter.

I know this is unorthodox and I am really looking for direction from the committee. Mr. MacKinnon offered to appear and make a statement prior to our reaching a decision on Mr. Philip's notice of motion. I am simply asking committee members how they feel about that request. Do you want to agree to it or simply move on to the debate of Mr. Philip's motion?

Mr. Philip: That sounds like a very long process. I would like to stand down my notice of motion until after we deal with a matter that has been before the committee for some time. It will only take a few minutes to deal with, because we have reached some consensus among the members. It is the Industrial Accident Prevention Association matter. There were three items outstanding on that. I suggest we pass that and then deal with the other, since there may be a rather prolonged debate on the other matter.

Mr. Chairman: What is the wish of the committee?

Mr. Mancini: I would like to follow the agenda if it is at all possible. I notice in the motion, dated December 4, the member for Etobicoke is requiring our committee to make a decision. If he wants to stand it down, he can, but we have some people who volunteered to be before us.

Mr. Wildman: This will only take about five or 10 minutes.

Mr. Mancini: Nothing takes five or 10 minutes in this committee. You should all know that by now.

Mr. Chairman: Fair comment.

Mr. Philip: I stand down my motion.

Mr. Chairman: That is appropriate. I look to the clerk for some advice on this.

Mr. Mancini: Does that mean we are not going to deal with it today?

Mr. Chairman: We are going to deal with it today. It is the intent that we will deal with it very briefly.

Mr. Mancini: That is just a technique to change the agenda, Mr. Chairman. You can see through that.

Mr. Chairman: That is my understanding. I am looking to the clerk for some advice.

Mr. Philip: The Liberals are being disruptive of the work of the committee.

Mr. Gillies: Let us try to prove Mr. Mancini wrong and deal with this in five or 10 minutes and get on with it. We could easily spend five or 10 minutes arguing about the process, which would not be productive.

Mr. Chairman: That is for sure. The clerk advises me that the committee can restructure its agenda. We do not need unanimous consent; we need a majority to consent. I think we have majority consent, so we will move on to the IAPA matter.

Mr. Mancini: I want to make sure the clerk is sure about that, that we do not need unanimous consent. I am serious. I have a right to ask for clarification on rulings. I am sure you would agree with that, Mr. Chairman. I am not as expert as my friend and colleague, Chief Justice Philip, but I want to be absolutely sure that the clerk is telling us exactly what he knows.

Mr. Chairman: The clerk is giving us the best advice he can at this stage. If you wish a formal motion to restructure the agenda, let us not kill any more time.

Mr. Wildman: I have a great deal of confidence in the clerk.

Mr. Philip: So do I.

Mr. Wildman: I am no way attempting to suggest that he should be retired.

Mr. Gillies: We cannot afford it.

SAFETY ASSOCIATIONS

Mr. Chairman: We have this matter before us. I understand there has been an agreement with all three parties to move on the three items that were outstanding with respect to the IAPA.

Mr. Philip: We passed all items except items 1, 2 and 15. Items 1, 2 and 15 are now changed as per our dialogue with some other members on the committee. I move acceptance of item 1 as rewritten.

Mr. Martel: Let me assist the chairman. The chairman will recall we asked for a delay at the request of some Liberal members and some Conservative

members to reword the first two items. While everyone seemed to be in agreement, after that agreement Mr. Gillies and I attempted to set up a meeting to rework the wording, but the Liberals refused to participate. Apparently, there was some pressure exerted, I will not say from where, to avoid providing the funding.

However, Mr. Gillies and I met anyway and I think we have agreement. In item 1, in the original motion we had suggested \$31.7 million, because that is the amount the IAPA and all the safety associations get. I would have preferred the original, but I was prepared to make sure that we get the principle at least established that funding should be there to try to minimize or reduce the number of accidents and illnesses in the province. We worked out this wording. I hope that my Liberal friends will join us in this vote and not oppose us.

Mr. Chairman: I have in order here Mr. Gillies and then Mr. Callahan.

Mr. Callahan: Actually, all I want to do is get a point of clarification on the motion itself.

Ms. Fish: You have it right in front of you.

Mr. Chairman: You have it in front of you.

Mr. Callahan: I have it in front of me, but item 1 says that "the funding devoted to organized and unorganized workers in the provision of occupational health and safety services be dramatically increased."

Mr. Chairman: That is rather than a specific figure.

Mr. Callahan: What does that mean?

Mr. Philip: We told you exactly what \$31 million meant. It was unacceptable to you. We have now changed it to be less specific in the hope that you would at least accept the words "dramatically increased."

Mr. Callahan: I do not know what that tells the Legislature.

Mr. Philip: It tells the Legislature that you people are not willing to have the committee--

Mr. Chairman: The committee is recommending a significant increase in the funding. It leaves the government considerable flexibility.

11:50

Mr. Gillies: I want to concur with Mr. Martel's comments that certainly our party is prepared to agree to items 1 and 2 as amended. The thrust and intent of item 1 are not debatable as a matter of principle. I think we can all accept that any expenditures used wisely in the area of research, counselling and so on can have a positive effect in reducing the number of work-place accidents.

As obviously the working people are the people who are affected day to day as much as anybody in terms of accidents, because they are the people who have the accidents, I believe they should have some resources to try to address this. We were not prepared to say, as was indicated in the original motion, that it should be \$31.7 million or \$3 million or \$100 million or any

other figure. I do not think we are competent to say the extent to which this funding should be available.

My understanding is that labour is provided at present with only \$1.7 million for this purpose. I think we can agree that some additional funding--in my opinion, considerable additional funding--in this area could be of benefit to safety in the work place. We are quite happy to agree to the revised item 1.

Mr. Philip: Call for the vote.

Mr. Chairman: Any further comments on the motion?

Mr. Barlow: The question I was going to ask was how much is organized and unorganized labour provided now? I understand it is \$1.7 million. How does that break down? I am sorry I was not here for the initial debate.

Mr. Martel: The Workers' Compensation Board takes part of the assessment and allocates it to labour and to the safety associations. The safety associations have been in place for a long time.

Mr. Barlow: I am aware of the safety associations, but I wondered about the \$1.7 million.

Mr. Martel: It goes in the same way to the Ontario Federation of Labour to teach their 30-hour course on occupational safety and to run the new centre they have to have up at the OFL building to try to head off illnesses and things from occurring by drawing attention to them. They get \$1.7 million. It has to be approved in exactly the same fashion that the accident prevention associations receive their funding. After this investigation, in future it will be scrutinized more carefully. The allocation has to come from a committee at the Workers' Compensation Board, which is going to allocate the amounts of money to the various safety associations, now including the OFL.

Mr. Barlow: How is unorganized labour going to receive funding?

Mr. Martel: They have no organization. We are hoping, and we know it is going to happen, that the OFL will take the lead and try to teach people in plants and offer courses around the provinces. They are doing what they call their 30-hour course to get them to understand what is in the act. In many places, the act is not posted yet. They will be able to teach them how to use the act appropriately, not frivolously.

The one concern management had when the bill came in was that labour would stop work at the drop of a hat. That has not panned out at all. What they are trying to teach is the appropriate way to use the act and not in a frivolous manner. The only way we will do that is to educate them about what is in the act and how to use it. There is no other mechanism other than that at present.

Mr. Barlow: Thank you.

Mr. Chairman: Any further comments on the first motion?

All those in favour of the motion?

All those opposed?

Motion agreed to.

Mr. Chairman: That motion took us about 10 minutes.

Mr. Philip moves that clinics to provide medical services and conduct testing for work-related illnesses be established.

Mr. Philip: The reason for this is that it is fairly clear from our party's inquiry around the province that workers often do not have access to independent information and research on work-related illnesses, particularly those caused by some very toxic substances. It is fairly clear they could not get that information from the Ministry of Labour and therefore there needs to be an independent testing program.

Mr. Callahan: I hear what Mr. Philip is saying. I suppose I cannot really argue with the content of it--I am only new on this committee--but it seems to me that our prerogative or our job is to scrutinize public accounts. I am not sure whether that really fits into the category of public accounts or it really is expressing a policy.

That is the difficulty I am going to have voting for that. I do not know about my Liberal colleagues but it seems to me that goes well outside the mandate of this committee. I do not know whether it is appropriate to raise it on a point of order.

I think we ran into that difficulty and you, Mr. Chairman, were to make a ruling at one time on an issue that was very similar. We did not have to get into your ruling because Mr. Gillies withdrew the particular notice of motion or reworded it, I think is what you did. We never heard what your decision on that was.

I am going to raise this issue again on a point of order and I am going to ask whether this time we can have the benefit of your wise and sage counsel by telling us whether or not that is in order, since it does effectively deal with policy as opposed to the mandate of this committee.

Mr. Wildman: Can I speak to the point of order? I understand what Mr. Callahan is raising. I point out that in this particular motion we, as the standing committee on public accounts, are reacting to the information we received from witnesses before the committee when we were looking at what the committee found, I think almost unanimously if not unanimously, to be an inappropriate expenditure of public funds by the accident prevention associations. Having come to the conclusion that they were not appropriately expending these moneys, the committee is quite within its mandate to suggest a better way for those funds to be allocated.

Mr. Callahan: I appreciate what my colleague is saying but in some respects that is not very different from the very nub of the question Mr. Gillies had in his original notice of motion on Wyda where, Mr. Chairman, you were to make a ruling. We never really had the benefit of that ruling. Maybe now we will get an idea of the parameters of the committee.

Interjections.

Mr. Chairman: Let us get on. Mr. Mancini had a very valid point earlier and his observations are proving to be very astute.

We have got to this stage in this whole business and, as you mention,

Mr. Callahan, you did come into this at a late date, but it has been accepted by the committee that we have supported another 17 recommendations, many along the same kinds of lines that we have discussed earlier.

In essence, I am not sure what the other decision was, dealing with the IDEA Corp. a few weeks ago, but in any event I am going to indicate that this is an order. We have been dealing with it for some time now and in my own view this is an inappropriate stage to bring up an argument such as that. I understand your position but I am going to rule that it is in order. Any further comments?

Mr. Martel: I want to speak briefly to item 2. I ask my friends to look around. If one looks in Windsor, you have Bendix, where a whole raft of workers have cancer. If we go to the Timmins area, where my friend has been fighting the battle for seven years to try to get testing of the people he represents, there is a major study out now indicating that far more people have cancer than anyone ever anticipated.

If you look in Sudbury at the old sintering plant, we have buried more than 100 men who worked in that sintering plant; if one looks at Johns-Mansville, the same thing applies. Nowhere in this province are there independent clinics. With all toxic substances, there are latency periods of up to 20 years. We have to get a handle on this because even Weiler, in his first report, said we are going to have more industrial diseases than industrial accidents in the near future. The only way we are going to get a handle on it is when workers can go to clinics where the doctors have a specific purpose; that is, to determine whether people are affected by the substances to which they are exposed. This has got to change. The resistance to change blows my mind. We see people dying and there is resistance to change that will protect their lives. What are we all about? I find the stall tactics and the nonsense so frustrating

12:00

Mr. Callahan: I take exception to that, Mr. Chairman. I raised the reason I--

Mr. Martel: No. Do not get defensive. I am not talking about you. The interference was by the minister himself, make no mistake about it, and that is why the Liberal position changed. Let us not play cute games here today. I am simply saying working people are dying because they are exposed to substances and they do not know what those substances do to them. There is no place for them to be tested or no place to compile the documentation that will prevent them from getting those industrial diseases.

Surely, we should be trying to head that off. There is only one way and that is to establish facilities to do the testing. I urge all of you to support that principle.

Mr. Chairman: Are you all familiar with motion 2?

All those in favour? Opposed?

Motion agreed to.

Mr. Chairman: Mr. Philip moves that the practice of organizing expensive annual conferences be discontinued as such an event cannot be justified in terms of previous years' low participation rates and excessive costs.

I want to be on record on this one. I think this is a frivolous motion.

Mr. Mancini: I agree with you, Mr. Chairman.

Mr. Chairman: I have some personal difficulty with this one and I am not going to be voting on this. There is a tie, obviously, but it just seems very frivolous indeed.

All in favour of the motion? Opposed?

Motion agreed to.

Mr. Philip: Obviously members of the committee have more understanding about the training process than you have, Mr. Chairman.

Mr. Chairman: I do not know about that.

IDEA CORP.

Mr. Chairman: We will move on to the next topic which is, again, notice of motion by Mr. Philip. I have already made you aware of Mr. MacKinnon's offer. Is the committee prepared to hear Mr. MacKinnon and his colleagues prior to rendering a decision on the motion?

Mr. Pope: I think Mr. MacKinnon is here to update us on what has happened since he was last before us, and I would appreciate that. However, I want to make sure that Mr. Philip's motion is dealt with.

Mr. Wildman: We are quite happy to have Mr. MacKinnon appear before us. I think it would be very helpful, but again, we have a question of time.

Mr. Mancini: It will take us only 30 seconds to vote on the motion.

Mr. Wildman: Yes. I think it would be useful to have--

Mr. Chairman: Do you want to deal with the motion initially? I think Mr. MacKinnon had expressed some concern--if that is the proper word--about addressing us prior to our taking a vote on the motion.

Mr. Wildman: Why do we not do it this way, Mr. Chairman? Why do we not ask Mr. MacKinnon to appear before us and set a time when we will vote?

Mr. Philip: If Mr. MacKinnon is going to address us on the motion, why do I not read the motion, let Mr. MacKinnon address us, and then we will take the vote on the motion?

Mr. Chairman: Has the motion been read into the record already?

Mr. Mancini: A couple of times.

Mr. Chairman: It was read into the read into the record already.

Mr. Gillies: Mr. Chairman, why do we not hear Mr. MacKinnon now and vote at 12:15?

Mr. Chairman: Are we in agreement with that proposal? Agreed.

Mr. Chairman: Mr. MacKinnon, if you would you like to come forward with the other officials, please proceed.

Mr. MacKinnon: Mr. Chairman, you know my colleagues Mr. Cass and Mr. Winter from our previous testimony. We have prepared a short statement. In view of the time constraints, I will paraphrase it as quickly as I can.

The policies of the IDEA Corp. with respect to the Wyda matter are based on clear and unequivocal instructions both from the government and from our board. These instructions are that we are to co-operate fully with the committee in all respects and we are to ensure that the activities of the company are thoroughly and completely reviewed. Everything we learned about the Wyda matter is to be made available to the committee; we are to actively use the appropriate legal remedies open to us if we have reason to suspect fraud, malfeasance, misrepresentation or any significant irregularity involving anyone--including public officials--who has been or is now connected to this case. Finally, we are to do everything that is within commercial reason, including the use of appropriate legal remedies, to preserve and enhance the public investment made by the IDEA board in Wyda Systems, if it is demonstrated that the assets of the corporation have value and that management is capable of realizing that value.

The motion that is before the committee indicates that the matter is complex, and our view is that the complexity of the matter has been greatly reduced in recent days. As members know, Peat Marwick is now the court appointed receiver of Wyda. It will review the affairs of the company and report to the court. These reports will be made available to the standing committee on public accounts and to others. As the committee will be aware, Peat Marwick is a nationally recognized firm of trustees and receivers and it has extensive backup support from related accounting firms.

Second, a review of this matter has been commenced by the Ontario Provincial Police. The police are focusing upon matters involving work station valuation, to which the committee has frequently referred. These transactions had their origin in 1984, well before the IDEA investment in Wyda. This particular transaction involves the Cumberland Group and companies that have businesses outside Canada, in the United States and England.

I will summarize the pace of events since we last met. We were very grateful for the committee's willingness to not object to the policy of making an interim loan to Wyda. Our strategy at that time was to determine what was going on in the affairs of the company with accuracy so that we could make commercial decisions or to bring the company under new management as quickly as possible.

When we put the information requirements of this committee before the company, it became very clear to us that the company did not have a very serious interest in fulfilling the committee's information needs. I would emphasize, though, that the conditions we put before the company were those conditions that we had agreed upon and discussed at this committee. Therefore, we acted as the servants of the committee in our view in putting those conditions before them, and we behaved and conducted ourselves exactly as we had indicated to you that we would the last time we were here.

In any case, after--

Mr. Wildman: We have not suggested otherwise.

Mr. MacKinnon: No. I do not want to appear defensive but I want it to be clear that it was the informational requirements of this committee that, put before this company, precipitated the receivership.

Mr. Philip: We agree with that.

Mr. MacKinnon: When we became convinced of that situation--that we would not get the information and in particular that Mr. Archer would not--we began a weekend of furious activity starting on Friday, November 28. On the following Monday, the receiver was appointed.

In the period of time since the receiver went into the company, we have learned several things. I will summarize them very briefly.

First, Wyda's banker confirms that the funds purportedly advanced by him to the company from November 1985 to April 1986 were received, and this means that later repayments to Mr. Dobzinski were justified, based on the accounting records.

Second, Peat Marwick yesterday completed its assessment of the work stations purchased by the company. I regret to report that their fair market value at the time of purchase does not approach the \$185,000 per unit purchase price.

Mr. Philip: Is that not interesting?

12:10

Mr. MacKinnon: Third, there is consequently evidence that the company or its management breached representations and warranties to IDEA Corp.

Fourth, there may well be a substantial tax liability under the scientific research tax credit program with respect to this transaction. I can explain briefly what happened there if you think I should go into those details, but I will pass for the moment.

Mr. Chairman: We can do it through the questioning process later.

Mr. MacKinnon: These two items, the breaching of representations and warranties respecting IDEA and the substantial tax liability under the SRTC program, may well involve commercial fraud.

Finally, while it is very preliminary, only one of two independent appraisers that the receiver has had into the company has reported. There is evidence that the technology developed by the company represents a very substantial value and has significant commercial potential. We expect to have either confirmation or further evidence to the contrary on that matter very quickly. As I mentioned in my opening comments, the thing we have found is that the company is linked with further investigations into other companies in ways yet to be fully determined.

I will conclude by describing very briefly exactly what we have done in recent days. Because of the information we have received, our actions have been as follows:

1. We have reported to the Ontario Provincial Police and it has decided to begin an investigation.

2. We have reported these irregularities to the investigation department of Revenue Canada.

3. We have assessed our civil remedies for breach of representation and

warranty under the subscription agreement governing the company and we have prepared for suit.

4. We have nearly completed a review of the remedies under the Ontario Business Corporations Act as an oppressed minority shareholder. Members will know that the court approved our request to appoint a receiver based upon the remedies open to oppressed minority shareholders.

Assuming further information is consistent with the current state of play as we understand it, Ontario Development Corp., as the successor to the IDEA Corp., will exercise every legal remedy properly available to it.

In summary, we have done our best to preserve the investment. We now have solid information to help us do so. We believe we have explored all the remedies that are now open to us and that those remedies are ample under the Ontario Business Corporations Act to investigate, pursue and, most importantly from our point of view, seek maximum commercial recovery from this affair as it has evolved to date.

Finally, we have paid careful attention to the interests of the employees of this company. They are at work. I would like to make one brief comment on that. On the day after the receiver went in, Toronto was visited with a severe snow and sleet storm, and despite all the problems we had with the receiver going in, all but one of the company's employees reported for work as normal. They are now working voluntarily at half salary to help us.

Mr. Philip: Was Mr. Dobzinski the one who was missing?

Mr. MacKinnon: I can conclude at that point. I am available for questions.

Mr. Chairman: Thank you, Mr. MacKinnon. Before questions, I want to urge a spirit of fairness. I have three people--Philip, Pope and Mancini--and we have very limited time, so I hope all three can be brief.

Mr. Philip: For the first time, we now know that Wyda is under serious investigation. We have not been told that before. There may well be charges of fraud, of income tax evasion and violations of the Business Corporations Act. I am now even more convinced that this is not a matter to be dealt with by this committee, but rather it should be dealt with by a judicial inquiry that will handle the evidence appropriately and where there would be no possibility, by accident, of either hindering a police investigation or in any way being sub judice at a later point, were this matter before the court.

It comes as no surprise that some of us on this committee had some suspicions about what was going on. Our suspicions now seem to be stronger in the light of the evidence that has been presented to us this morning. I suggest that my motion, if it had relevance two weeks ago, in the light of what has been said today, has even more relevance. I hope members of the committee will vote in favour of it.

Mr. Pope: First of all, I want to say to the Ontario Development Corp. that I think it has done a good job in the last month to month and a half in terms of protecting the public investment and handling this matter. I want to start off with that. I think they are to be commended for the work they have done.

We do, obviously, have a disagreement, which I have said before publicly. I think we should have been on this four months ago. I think a full forensic audit should have been done. When I first made my motion in August in camera, I think it should have been started then and the matter should have been vigorously pursued. As we sat for two months, it became increasingly clear to us that a forensic audit was needed and that there was a potential for charges being laid.

I said that to this committee in camera twice in August and September, and then when we went public with it, I said it again. I do acknowledge that in the last four to six weeks they have done an exemplary job of moving in on the matter and I want to make sure they understand that. I think it should have been done earlier, but that is a difference of opinion.

We now know that the Ontario Provincial Police have gone in. That has not been said before, that there is an investigation going on. Frankly, I had said to my colleague Mr. Philip some time ago that we were thinking as a party of calling in the OPP, based on the evidence that we had, but we could not get a forensic audit going. I said that to other members of this committee, because we were convinced that the matter needed OPP investigation.

I want to say in conclusion, because others wish to speak, that it has been clear from the outset that there was misrepresentation on the closing, which was made public to this committee in a public hearing in the month of August. The misrepresentations were that there were no other material contracts outstanding. That representation was given by Mr. Dobzinski and Wyda at the very time that they had a deal with Mr. Fleischmann and Canadian Intercorp and got \$30,000 and at which they had a new arrangement with Mr. Caplan to get \$8,000 a month.

Those were not disclosed on the closing. That was contrary to the representation section of the subscription agreement; so we had evidence of misrepresentation, even at that time. The other matters are matters that you have uncovered. I will bring you back to September, when I asked for the production of the customs documents for the work stations to indicate whether or not these assets were overvalued from the point of view of extracting additional funds from IDEA Corp.

It now appears from your statement that this may have been the case. I can just indicate that we are happy now that you are on to it. I think you are doing a good job and are to be commended for it. My position remains that this should have happened four months ago. Mr. Philips' motion of a judicial enquiry is now called for.

Mr. Mancini: I have something to say and also some questions to ask. I would like some help. My understanding is that in June, 1985, Spectrum Semiconductors Inc. spent a \$5.835-million interest-free loan, which was approved by the former Progressive Conservative government. That money is also under investigation by the OPP. Is that right?

Mr. MacKinnon: That is correct, sir.

12:20

Mr. Mancini: Can you tell me whether the investigation into Spectrum has drawn Wyda into the investigation. While you are answering that question, can you tell me whether it was the things that Spectrum did that put Wyda in the position it is in?

Mr. MacKinnon: I think the answer to the two questions is, first of all, these matters are clearly related in ways that have yet to be determined fully, but they clearly are related. The second answer is no. I think the affairs of this company and its activities in running its own operations can be viewed as being self-contained in terms of bringing the company to the position it is in today.

The ambiguities that remain in terms of the connections will become public knowledge very quickly--some of them very quickly--because the receiver is a court-appointed receiver. That may be a condition of great relevance to the committee in that all the possible remedies now available to us, the treatment for this action, are under the jurisdiction of the court. The receiver reports to the court and his reports are made public. There is an investigation under the Ontario Business Corporations Act, and the same conditions apply, so that the further information in those connections can be expected to be publicly available very quickly.

Mr. Mancini: I guess this is not a fair question, but do you foresee a lot of connections between Spectrum and Wyda in their business dealings?

Interjection.

Mr. Cass: I do not mind speaking to that. I think at this time it is premature to make that kind of assessment. The major involvement of the Cumberland Group with Wyda occurred in 1984 when it was set up. When it transferred ownership to the Dobzinski group, I understand it had a carried interest basically in Wyda--it was becoming a group--and they had interrelationships relating to premises and common services that companies that were linked at once would have; but I am advised that this summer they made arrangements to separate from one another in terms of their corporate relationship. There is always a significant relationship when there is common ownership, which there was at one time. The Cumberland Group owned Wyda at one time and it owned the LSI group of companies.

Mr. Pope: The evidence is before the committee that on October 10, 1985, Dobzinski finalized the buyout.

Mr. Cass: Yes.

Mr. Pope: Then became the owner of Wyda?

Mr. Cass: Yes.

Mr. Pope: That was six months before the deal closed?

Mr. Cass: Yes, but the transactions and the major relationship that Cumberland had with Wyda predated that 1985 date when all the work stations were transferred and so on. That is my understanding.

Mr. MacKinnon: The contractual date involving the work station is either October or November 1984, I believe.

Mr. Pope: Yes.

Mr. Mancini: We are not going to vote in favour of the motion that calls for a judicial inquiry for a couple of very important reasons, which we have been informed about today. The most important is the fact that there is

an ongoing, immediate OPP investigation, which will yield results and information almost immediately. Second, information has been provided by the gentleman appearing before us today that the court-appointed receiver will be receiving and making public information on an ongoing basis. Maybe some time in the future, after the police investigation is over, a judicial investigation into whatever things members may be interested in can be undertaken, but I do not think the long, slow, tedious procedure of trying to get information through a judicial inquiry will work as advantageously as the present police investigation.

Mr. Chairman: Thank you, Mr. Mancini. Mr. Wildman and Mr. Gillies.

Mr. Wildman: I have two very short questions and I will be very quick about it. You indicated that the investigations and so on have led as far as England. Have they also led to Switzerland and Monrovia, Liberia? Whether or not they have, are any of the possible charges that may come out of all of this extraditable?

Mr. Cass: I do not know the answer to your question of how far throughout the world this actually will extend. Our point, and it is drawn as well from the original inquiry, is that Budgrove Ltd. and Grancom are companies incorporated in England.

Mr. Wildman: But their principal is in Switzerland?

Mr. Cass: That is the very point. Really, we think the appropriate body to make that type of investigation is not someone like ourselves but the OPP with their worldwide affiliations and with different police networks and their abilities to communicate with them. We do not have that ability as much as the police do.

Mr. Wildman: I understand what you are saying. Because of the time, I will ask just one other question. Your commitment to pursue this in whatever ways possible is a good one and one that the committee appreciates. Do you anticipate any problem, for instance, in terms of getting redress either through the civil courts of whatever if there is a judicial inquiry? Would that in any way impede you?

Mr. MacKinnon: If I can make two comments, the first is that the evidence that is available--and it is evidence that has specifically become available because we provided certain advice in advisory capacities--is that this company is a company of some solid valid value in terms of its technology. What is preoccupying us is, as is appropriate, that we want to maximize the value to be derived from it and from its assets. We are very concerned about the jobs of the employees working there.

It is our view that the remedies available to us under the Ontario Business Corporations Act, which are very powerful remedies, are the best way to go after this situation and, at the same time, to enhance our hope of recovery. I think your advisers will confirm to members of the committee that the remedies under that act are very strong, very powerful and very public.

Mr. Gillies: I want to echo my colleague's comments earlier that we really do appreciate how forthcoming and thorough Mr. MacKinnon and his colleagues have been in bringing this to the committee this morning. We certainly have no quarrel with your recent efforts to get to the bottom of this.

However, with the information having been brought forward, which confirms so many of the instincts or suspicions, if you will, that those of us on the Caplan inquiry developed through the summer, this information put before us this morning confirms in my mind more than ever that both Mr. Philip and I, in calling in the House for a judicial inquiry, were right to do so. I see no value in delaying such an inquiry, which can certainly be initiated concurrent with the other police and tax investigations under way.

I impress on members of the committee that we have already had one key witness to this whole affair leave the country. In view of the fact that gentleman is not a Canadian citizen, it may be very difficult to persuade or even oblige him to reappear and give testimony. I suggest with every passing week that this matter is not under a judicial review that other pieces of information could find themselves missing.

Mr. Wildman: There are other important witnesses who are not--at least one--citizens of this country.

Mr. Gillies: I believe it is incumbent that we move in this direction. Indeed, with the information Mr. MacKinnon has made available to us about the willingness of the employees and their stake in this to carry on, I think it is in everyone's best interest that we deal with this expeditiously.

Mr. Chairman: Mr. Epp is not sitting as a member of this committee. He has asked for some time, but I am not going to allow the time to be exhausted by someone who is not a member of the committee. If we have, Mr. Epp, we will allow you.

Mr. Philip: I have just one question. You stated earlier today in other testimony that the main assets of the company were intellectual. Can you tell us the physical whereabouts of Mr. Dobzinski's brain at the moment?

12:30

Mr. MacKinnon: I am pleased to answer that question. The assets of the company are intellectual. By that I do not mean they just go around inside somebody's grey matter. They are on tapes, they are on paper and they were recorded in various ways.

The evidence that is available to us at this point is that we have the technology involved in this company. It was not available to Mr. Dobzinski to copy without the assistance of his employees. No such effort was made by them to assist him.

After we dealt with the company on the Friday that he closed it down without consulting us, I need add, although we anticipated his action, we took steps to safeguard the technology. While no one can be sure, the probability is that the receiver is in sole possession of the technology as it exists.

The other point that is relevant to your question, sir, is that the product is not complete.

Mr. Philip: My second question--and it will be my last--is it not true then that since it is not complete and since the main inventor is Mr. Dobzinski, and that Mr. Dobzinski--

Mr. Wildman: Along with the American.

Mr. MacKinnon: No, sir. It is very important that I correct your apprehension of that situation, with all due respect. Particularly now with the evidence that is available to us, Mr. Dobzinski was not the prime inventor of this technology; it is his staff, the people who worked for him. He was the man who put the team together, attempted to find external financing and managed the more commercial side of the operation, but he has not possessed the technology.

Mr. Philip: Let me put it as quickly as possible then. Mr. Dobzinski does have the hardware; he has it with him; he has it in Israel. Is that not the case at the moment?

Mr. MacKinnon: The software.

Mr. Philip: The software, I should say.

Mr. MacKinnon: I just repeat, sir, I think the evidence that is available to us suggests that he does not, but it is impossible to be conclusive on that matter. Do you know anything about that, Bob?

Mr. Winter: He may have.

Mr. MacKinnon: The best evidence available to us is that he does not, but it is impossible to be completely conclusive.

Mr. Philip: Is it not true that this technology has or could have military significance and it would therefore probably be in the best interests of Israel that it had a person of this calibre who had taken the software with him to re-establish and work on the same project as a competitor to us either in Israel or some other country?

Mr. Wildman: Particularly an individual who has links to these very military and security services.

Mr. MacKinnon: It is very hard for us to speculate on that, but the best evidence available to us is that he is not in a position to do anything of the sort. The best evidence that is available to us now is that he did not have the technology and since the product was not complete and much work remains to be done on it, even if he did, it could not be applied immediately.

One other point that is relevant about this kind of product is it typically has a very short shelf life. In this business, you can have a product that could go through its entire life cycle in less than a year. If you do not play it exactly right in accordance with those windows, the product will be superseded by others, so that if you did have an advantage, if the product did convey any specialized advantage, it would not do so for long.

Mr. Chairman: I am not going to have any time to recognize Mr. Epp. We have the motion before us.

All those in favour? All those opposed?

Motion agreed to.

Mr. Chairman: If the Lewis matter is resolved, as indicated by the Treasurer (Mr. Nixon), next week we will be dealing with our 1985-86 report and the estimates of the Provincial Auditor.

The committee adjourned at 12:35 p.m.

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(Printed as P-1)

STANDING COMMITTEE ON PUBLIC ACCOUNTS

SUBCOMMITTEE REPORT
GOVERNMENT INVENTORIES
ESTIMATES, OFFICE OF THE PROVINCIAL AUDITOR

THURSDAY, DECEMBER 18, 1986

Draft Transcript



STANDING COMMITTEE ON PUBLIC ACCOUNTS

CHAIRMAN: Runciman, R. W. (Leeds PC)

VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)

Barlow, W. W. (Cambridge PC)

Callahan, R. V. (Brampton L)

Davis, W. C. (Scarborough Centre PC)

Epp, H. A. (Waterloo North L)

Mancini, R. (Essex South L)

Philip, E. T. (Etobicoke NDP)

Pope, A. W. (Cochrane South PC)

Smith, D. W. (Lambton L)

Wildman, B. (Algoma NDP)

Clerk: Arnott, D.

Staff:

Fritz, H., Research Officer, Legislative Research Service

Witnesses:

From the Office of the Provincial Auditor:

Archer, D. F., Provincial Auditor

Otterman, J. F., Assistant Provincial Auditor

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON PUBLIC ACCOUNTS

Thursday, December 18, 1986

The committee met in camera at 10 a.m. in room 151.

11:02 a.m.

Mr. Chairman: We have all been advised here that there is a certain Toronto furrier who is quite upset at the moment about the Sunday closing law. It was upheld.

Interjection.

Mr. Chairman: I am not sure, but it was upheld. I was just informed by the media in the hall.

Mr. Mancini: Was it upheld in its entirety?

Interjection: --\$10 bucks apiece.

Mr. Mancini: I do not think we got past the coffee stage.

Mr. D. W. Smith: The furrier is going to lose \$2 million. Is that right?

Mr. Chairman: You have an agenda in front of you. Before we get into that, if I can get the committee's attention, I wanted to make an announcement. Our researcher Helen Fritz is departing early in the new year to work with the Premier's Council through the Ministry of Industry, Trade and Technology.

Ms. Fritz: ??That's it.

Mr. Gillies: I hope you get enough ?? --

Interjection: It is important to know that.

Mr. Chairman: Her replacement is going to Patrick Malcolmson who has joined us. We look forward to working with you and Helen, on behalf of all members of the committee, we want to express our thanks for all the assistance you have provided to us over the past period of time, as a committee, and as individual members. Personally, you have done some work for me and it was excellent. All of our experiences, in terms of the working relationship with you, have been outstanding. We all wish you well in your future endeavours.

Mr. Epp: I want to add my thanks to that and that of my colleagues. She had done a superb job and we want to wish her well in her new endeavours, in that new job she is going to take.

Mr. Chairman: Moving on, the chairman statement on a question of privilege. I am going to delay that until Mr. Philip is with us, because it was his question of privilege and I do not think it would be appropriate to

P-2

ms

P-1100-2


December 18, 1986

deal with it when he is not present

SUBCOMMITTEE REPORT

Mr. Chairman: Everyone has a copy of the subcommittee recommendations? We can go through them rather quickly. Regarding the retirement of the clerk, the subcommittee agreed to recommend the committee not pursue this matter further based on the announcements and I think you have an excerpt from the minutes of the Board of Internal Economy--

P-1105-1 follows



~~RECOMMENDATION REPORT~~

~~copy of the minutes of the meeting December 15 in front of you. Based on that and the comments of the Treasurer (Mr. Nixon) last week when he appeared before us, it is the subcommittee's recommendation we not pursue it any further. Any questions or comments? All in agreement?~~

Second is the IDEA review. The subcommittee is recommending that we deal with that as our first priority in the new year. All in agreement?

Mr. Barlow: What about the need to do our report that we start today. If schedule those two meetings, it is going to be well into February before we get into reviewing our report.

Mr. Chairman: That is a good comment. We could set aside another hour. That should suffice. Do you think that is adequate to finalize it?

Mr. Epp: I would think so. Since it is in camera, if necessary, we could start a little earlier. We will leave that to your discretion.

Mr. Chairman: We will set aside an hour at one of those two meetings.

Mr. Barlow: I wanted to make that ??

Mr. Chairman: It is a good point.

Third is the convert-to-rent program. We have made that our second priority. All in agreement? Agreed.

Four is the documents retained by our special counsel during the Caplan hearings. The subcommittee made a request to Mr. Bell in respect to those materials. He personally requested a motion from the committee. He felt that was the appropriate route. We require a motion on this particular matter. Rather than ??setting it in the report, I would like to have a motion on this recommendation.

All in agreement? Agreed.

Five is the information requested on termination settlements. I have a copy of that report. I am not sure if it was a unanimous recommendation. I do not believe it was. We have Mr. Epp dissenting on this. The subcommittee is recommending that the information be filed with the committee as a public exhibit.

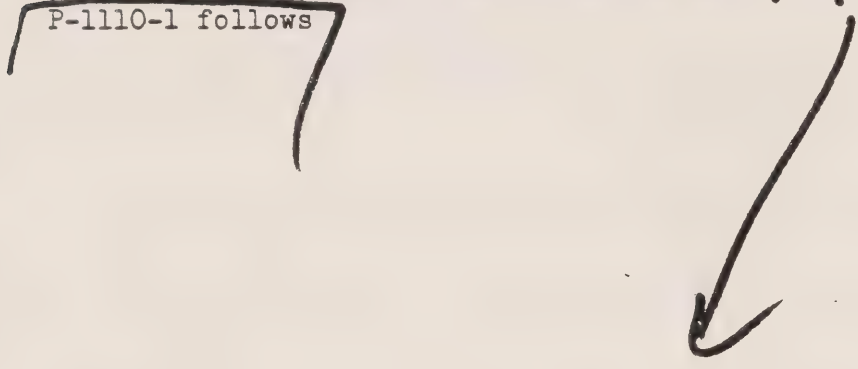
Mr. Epp: My contention at that meeting--the same as today--is that the government makes agreements with individuals and I am not adverse in principle to them being made public except that it weakens the government's case in negotiating with other individuals for their termination. The other

employees start citing cases which might help them to get a better settlement from the government and I think the government is always fair. I am sure they have been fair over the last 120 or more years. I think it would not be to our advantage to weaken the government's position in its discussion in termination settlements with employees. It is on that basis that I oppose the particular recommendation.

Mr. Chairman: Any additional comments?

Mr. Gillies: Briefly, I appreciate the concerns Mr. Epp has expressed but, in this case, especially with the knowledge the committee has of a couple of cases that have been discussed and the one we had before the committee, that any concern I would have about individual confidentiality is overridden by a concern that we all share that the government should strike a policy in this regard. I do not think it makes for good business practice on the part of the government to be negotiating each of these termination practices in apparent isolation and without . . .

P-1110-1 follows



(Mr. Gillies)

... ~~the government should not be in a position to~~ regard to any particular parameters or guidelines that could serve all officials, senior or otherwise, of the government well.

11:10

One thing I heard oft repeated in committee during our consideration of the former clerk's package was, "Mr. Lewis had the rank and stature of a senior deputy minister. His entitlement on retirement should be that which is prescribed for a senior deputy minister."

We would benefit from looking at a number of these settlements. If there are particular anomalies or individual settlements which seem unreasonable, then we should have a chance to examine and comment on them. I know personnel matters at the municipal level are often discussed in camera. I view this somewhat differently. I see it as a policy question. I believe our committee could have some valuable advice to offer the government in this regard.

Mr. Philip: As the committee responsible for monitoring the public purse and in light of the platinum handshake of Roderick Lewis and some other information I have obtained through various sources, I feel that the public has a right to know. We are not dealing with personnel decisions regarding public servants. We are dealing with crown employees. There is quite a distinction. These are crown employees appointed by the government in power at the time to serve at the pleasure of Her Majesty and the Legislature, notwithstanding any other contracts which may be signed as part of the package.

Over a period of years, we have seen some very lucrative packages given to friends of the government in power. The public has a right to know. If a government wants to do that kind of thing, then those packages should become public. We are not dealing with a private corporation. We are dealing with the taxpayers' money. When someone becomes a crown employee as distinct from a public employee, he understands that a political position is being made open to him or her. Being a political position, it should be open to the scrutiny of the public and the Legislature.

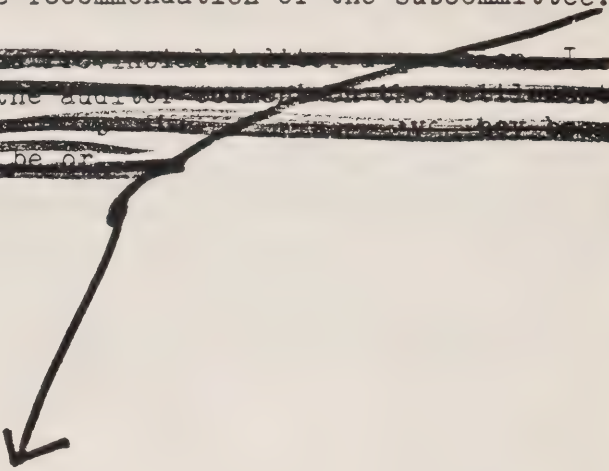
In terms of what we are looking at now, I cannot understand why anyone would feel terribly upset if someone found out that he got a fairly good settlement. For a corporation which might be out there looking at him as a potential employee, one can always rationalize that the reason he is losing his job is that he was too closely associated with the previous government. If he got a reasonably good settlement, then it would give some indication of his worth or his value and so forth. I cannot see this as being a terribly embarrassing thing.

We are not going into the personal life of the individual. We are not looking at whether he was sacked because he was an alcoholic or because he had his hand in the till or something like that. We are talking about the cash settlements and pension benefits for people who are being retired prematurely by a government for whatever reason. These are crown employees. There is a great distinction between that and a school board dealing with dismissal actions on a particular teacher or the alleged problems of a janitor in school X or something like that.

That is completely different from what we are talking about. We are talking about crown employees who know they are getting a political appointment which should therefore be open to public scrutiny and debate. For that reason and since I was the one who moved that we get information on all these other handshakes, I support the recommendation of the subcommittee.

~~Mr. [redacted] I would like to know if the Auditor General has
have not seen these documents. Would the Auditor General be the only one
themselves as a general
is [redacted] you think they should be or~~

P-1115 follows



~~For the purpose of this meeting, I am not going to get information on all these things. I am only going to get information on the settlements.~~

Mr. Epp: I would like to ask the Provincial Auditor a question. I have not seen the settlement. Would the auditor comment on a general basis on the settlements the government has made with respect to the termination of these employees? Have they been exorbitant or have the settlements been in line with what you think they should be?

Mr. Archer: In most cases, there was no settlement whatsoever. In three or four which did involve a settlement, we feel that the amounts that were arrived at were quite within the ranges of settlements both in the public and the private sectors.

Mr. Chairman: Since we have had some dissension on this, we should have a motion.

Mr. Philip moves subcommittee item number 5, that information from the Provincial Auditor regarding termination settlements be filed with the committee as a public exhibit.

Mr. Gillies: Could I request a recorded vote and a 20-minute adjournment?

Mr. Chairman: All right. I will allow that unless you want to withdraw it.

Mr. Gillies: I do want to withdraw that.

Mr. Mancini: I am withdrawing my support.

Mr. Chairman: All in favour of the motion as moved by Mr. Philip? Opposed? I will vote in support of the motion.

Motion agreed to.

Mr. Epp: Is that a policy to vote in favour of all these things?

Mr. Chairman: Not--

Mr. Mancini: Mr. Chairman, I do not think it has been the tradition of chairmen to do that.

Mr. Barlow: We have a new tradition.

Mr. Mancini: I want to ask the clerk if it is a new tradition.

Mr. Chairman: --to break a tie.

Mr. Mancini: Let me ask. I want to ask.

Mr. Chairman: That is quite fair. I will let you ask the question.

Mr. Mancini: What is the tradition of procedures in committees when there is a tie vote? What way does the chairman usually cast his vote?

Clerk of the Committee: It is up to the chairman to decide how he casts the vote.

Mr. Mancini: Has there been any standard tradition?

Clerk of the Committee: There is a tradition that the chairman casts the vote in support of the status quo. The status quo can be defined in terms of the situation, in terms of clauses of the bill and in terms of motion under consideration.

Mr. Mancini: You mean he is off the hook? Is that what you are telling me?

Clerk of the Committee: Finally, it is the chairman's decision.

Mr. ??Barlow: ??It is really one side setting up the other side.

Mr. Epp: You are saying that he did not vote the right way. Is that right, Mr. Arnott?

GOVERNMENT INVENTORIES

Mr. Chairman: Where is Mr. Philip? We are never going to be able to deal with his question of privilege. Mr. Philip, you keep sneaking out of the room when I want to deal with your question of privilege.

Mr. Philip: I will be with you in a second. I have to speak to a reporter outside.

Mr. Chairman: I would like to deal with this.

Mr. Mancini: I move we strike it from the agenda, Mr. Chairman.

Mr. Chairman: We are going to have to because once we get into estimates, I do not intend to get back to it.

Mr. Mancini: I move we strike that item from the agenda.

Mr. Chairman: Mr. Philip is ?? and it should not take too long to deal with this matter.

At the committee's last meeting, Mr. Philip raised a question of privilege relating to media reports of allegations concerning the disappearance of certain furniture and movable assets. I undertook to consider the matter and to report to the committee this week.

The same issue was raised by the member for Nipissing (Mr. Harris) in the House on Monday, December 1, 1986. At that time, the Speaker ruled that the member did not have a point of privilege. I quote from Hansard: "I cannot see that it is a point of privilege. The matter took place outside the Legislature."


As committee chairman, I must therefore state that the Speaker's ruling stands on this matter. The place for a challenge of the Speaker's ruling was in the House on December 1. I find that Mr. Philip's remarks do not constitute a point of privilege.

While members are free to raise questions of privilege in committee, I remind all members that committees such as ours have no power to deal with breaches of privilege. The proper and only court of action open to a committee would be to report to the House the facts and allegations of a particular situation and to ask the House to deal with the matter. It would not behoove this committee in my judgement to be seen to be reporting allegations to the House without substantial evidence to back them up.

Finally, I remind the committee that the item, Poor Control over Movable Assets, has been identified as the first priority item for review during our consideration of the Provincial Auditor's 1986 annual report.

Mr. Philip: May I respond briefly to your ruling, Mr. Chairman?

P-1120 follows



December 18, 1986

Mr. Chairman: I do not want to set a bad precedent. The clerk reconfirms that my ruling is not debatable. It is challengeable, but not debatable.

The next item on the agenda is the estimates of the Office of the Provincial Auditor.

The committee moved to other business at 11:21 a.m.

Follow by PAGE 1.

P4120-1 / Dec. 18 / 86
LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PUBLIC ACCOUNTS

Thursday, December 18, 1986

The committee met at ??10 a.m. in room 151.

11:21 a.m.:

After other business.

ESTIMATES, OFFICE OF THE PROVINCIAL AUDITOR

Mr. Archer: I think most members know Jim Otterman, the assistant provincial auditor. He is here to help to explain or answer questions that committee members might have.

I hope each member received a copy of the briefing book and that they at least had a chance to scan it if not read it in its entirety. The key page in the document is page 1, which is a synopsis.

As you can see in the opening paragraph of the synopsis, our overall estimates are in the range of \$6.4 million. This represents an increase of \$1.4 million or some 28 per cent to 29 per cent over our 1985-86 estimates. This percentage increase is certainly very unusual for our office and probably for most ministries or agencies of government for that matter.

This increase reflects two major changes in the office that have occurred in the past year. One is a substantial increase in staff resources. We have increased our permanent complement by eight people, which is roughly nine per cent or 10 per cent. We have also made much more extensive use of contracting services from public accounting firms. If we were to convert the contracted services into full-time positions, we would probably be talking about another five or six staff positions in the office. The increase in staff resources overall amounts to an equivalent of 13 or 14 additional people.

The other major reason for the increase is the relocation of the office. We have been operating under very cramped and inadequate facilities for some time. As of November 1, we have moved to much larger premises. At the same time we are upgrading our office accommodation and facilities considerably to a level that is compatible with a professional accounting or auditing operation, which we feel we are. Certainly, it will put us at much the same level as a major public accounting firm. This had required bringing in a lot of additional furniture, what we call systems furniture; development of work stations for the staff that will enable the use of microcomputers, which are an increasingly necessary resource for accounting offices these days; and also the use of telephones operating out of these work stations.

The combined increase in staff and the much improved office accommodation accounts for the bulk of this 28-per-cent increase in this year's estimates over last year's.

One or two other items mentioned in the synopsis are the change in the policy of the Ministry of Government Services with regard to rent. It now charges that rent back as opposed to absorbing it. That caused a couple of points in our percentage increase. We are continuing, as we have for the past two or three years, to upgrade our facilities with regard to the use of electronic data processing.

(Mr. Archer)

~~in our presentation, we have indicated that we will be upgrading our computer system over the next three years, to upgrade our computer system from a mainframe to a minicomputer.~~

With those general comments, we will be very pleased to try to answer any specific or general questions for that matter that the committee members might have.

Mr. D. W. Smith: When the Ministry of Government Services charges this rent, is that a better way of keeping a handle on the operations of government? In your opinion, is this a good way of keeping a better tab on things?

Mr. Archer: The theory is to make the ministries and other offices such as ourselves that deal through them more accountable for the expenses of running their own operations. For the past number of years, MGS has gone into a chargeback mode. It is charging back a lot of things now that it used to absorb like telephone costs and that sort of thing. Rent is the most recent of those chargebacks.

Mr. D. W. Smith: The Ministry of Government Services will be doing this with every department or agency?

Mr. Archer: I am advised this is the ministry's intention. To date, as far as the rent is concerned, it has only done it with regard to the legislative offices, for example, ourselves, the Ombudsman, the Commission on Election Finances and that sort of thing. Ultimately, it is our understanding it will extend this to ministries as well.

Mr. Philip: I have a few questions on the auditor's estimates. The estimates propose a staff complement of 114, which is an increase of eight over last year.

Mr. Archer: Right.

Mr. Philip: To what audit areas have you assigned the new staff? Where will the extra work be taken up?


Mr. Archer: The most significant area of increase is in what we call a special assignments group within the office. During the past year, we have established a special assignments section whose job it will be to undertake, for example, any motions passed by the committee that require us to do work in our office. Also, we are much more into what we call government-wide reviews. We used to audit everything on a ministry-by-ministry basis. In the past couple of years, we have started to do more auditing on an across-government basis for functions that lend themselves to that type of audit. For example, the removable assets audit and the audit of the payroll, both of which were reported in this year's report.

Mr. Philip: If we look at the operations of the General Accounting Office in the United States, we see that on those specialized teams--and they have so many specialized teams--there are people who are not just auditors, but they will have an expertise in the case of the United States perhaps in the defence industry or management or legal background or even constitutional background and so forth.

I have suggested to you that you should have a fairly good corporate legal person on your staff. If he has an accounting background, so much the better. In the special assignments group, are you looking into the possibility of having people added to the staff who are not just auditors or accountants but have other specialties?

Mr. Archer: We are certainly looking into that. We are not doing it from the standpoint of having permanent people on staff with this capability, but hiring a particular expertise as we need it for a particular audit. We do not expect we will need the expertise to the extent of the GAO in Washington or even the Auditor General in Ottawa. We are trying to

P-1130 follows



(Mr. Archer)

11:30

~~the current of the accounting office~~
operate from a common sense standpoint in our audits and not get into the position where we have experts who are passing judgement on the experts, for example, whom the ministry may have hired in order to justify the course of action it has undertaken, but we do feel there are certain situations where we just need expert advice primarily for us to understand the business the ministry or the agency is in. We see much more use of outside help in that regard. In some cases, we have gotten that expertise by getting people seconded from an operating division of a ministry to help us--

Mr. Philip: Do you have a staff lawyer at the present time?

Mr. Archer: No, we do not. Up till now, we have used the services of the Attorney General (Mr. Scott) and we have had no occasion till now to be dissatisfied with that service.

Mr. Philip: Considering the experiences we have had in the last few months, would you not be suspicious that there is a possibility of a conflict of interest in using the Attorney General's lawyers. Notwithstanding some of the terrible advice they have given the Attorneys General over the years, I think every case he has had has been sort of thrown out as unconstitutional with the exception of the Sunday closing I might add. Would it not seem reasonable to have an independent staff lawyer on board?

Mr. Archer: I cannot argue with your statement, but yet I fall back on our experience to date. Certainly it would be expensive to hire our own on-staff lawyer. We do not see there is a need. We might only require legal advice two or three times a year. To date, we have had no dispute or no dissatisfaction with the advice we have been getting from the Attorney General. While in theory it might look as though there is a conflict of interest and that we should have more independent legal advice, from a practical standpoint to date we have not seen the need for it.

Mr. Philip: Since you are dealing with legislative matters, and far be it for me to argue on behalf of the legal profession, but one of the things that the Ombudsman, who is your counterpart from the human rights point of view, has found that indeed the legislative library research has found, and they do some excellent work for the committee, as well as for other committees, is that it is very useful to have people who have legal training, not necessarily lawyers. For example, the person who is in charge of administration at the Ombudsman's office is a lawyer; not one who is practising law, but none the less has a degree in law in addition to management degrees, a masters in business administration or something else.

It may well be worth your while that when you are looking at the next staff appointments, you might try to find somebody who has both a legal background and possibly an accounting background so that you at least have your own expertise on staff to deal with those matters that have legal overtones so that they can do the legal research for you.

Mr. Archer: Yes, you are right. We have had experience like that. Two or three years ago, when there were more lawyers than there were jobs for them, we had a couple join our staff in an attempt to change careers and get into the accounting or auditing business and they did have legal degrees. You are right. We did find that having those people on staff was an advantage.


Mr. Philip: I would like to talk about the staff turnover. I will ask my first question and then I will go through some of the figures that we can extract from your report. Is the staff turnover taken into account in your determining the total staff component, which you proposed in the estimates? For example, during the 12 months ending January 31, 1986, your office saw a net gain of 11 staff members. Twenty-five employees joined the office and 14 separated.

Mr. Archer: Right.

Mr. Philip: Do you build in a projection of a certain turnover when you are calculating your proposed component?

Mr. Archer: The total complement of 114--

P-1135 follows .



Have you done any study on the staff turnover at the accountant level? From what I have heard in the field, there is a real advantage to an accountant coming and gaining public experience in your office and training, if you want, and then going back to industry. Do you see this as a healthy function or are you acting simply as a very inexpensive training system then


for private enterprise? What is your average turnover of an accountant?

Mr. Archer: As you can see, we have a high turnover.

Mr. Philip: But in terms of months or years, how long do they stay with you?

Mr. Archer: How long do they stay? Our basic intake level is university graduates. Everybody who comes to us is expected to enrol in one of three main accounting associations, chartered accounting, certified management accounting or certified general accounting. In order for them to fulfil that course of study, there is a minimum of two years. Quite often, it runs three or four years before they succeed in passing the academic requirements that lead to a designation. Generally, we will get--

P-1140 follows



(Mr. Archer)

~~...that that could be a study that would be done of two years or more. Then it was done and found that the average time that a person spends in the public accounting field is about two to four years out of a person.~~

11:40

However, when they get their designation is when they become very marketable. Many of them will leave our office to go into a public accounting firm, for example, or a board in industry. I think we are generally fairly well competitive with the salaries that public accounting firms pay but, in many cases, we are considerably under what they could get for a job in industry.

Mr. Philip: If I was the president of a crown corporation I would be looking for your guys to do my internal audits. If there is one way of protecting my bum is to have somebody that was trained in the Provincial Auditor's office to make sure I do not fall into a trap that will cause me to be called before the standing committee on public accounts, or reported on by the Provincial Auditor.

What is the advantage to a private corporation who is never going to have to deal with you unless it happens to end up in contract as Wyda did with the government?

Mr. Archer: I do not think having been trained through our office is much of an advantage if the person is going out to the private sector industry, for example. What the private sector is after is a university graduate with a chartered accountant's degree. They do not really care where he is trained, whether it is with us, Clarkson Gordon, or whatever. But we do lose a number of our people to other ministries and agencies in the capacities of internal audit or finance. The government recognizes a good auditor.

Mr. Philip: From the point of view of the public, it would seem to me, and it may sound like a convoluted argument, that the more people you train that go back into ministries and crown corporations to do internal auditing the more likelihood there is that those public companies are not going to get into trouble because they are trained in what to look for, how to follow the Manual of Administration and behave appropriately.

Mr. Archer: Yes, that is right. I fully support that. I do not have the statistics with me but we could easily get them. A number of our people have gone out to ministries and agencies of the government.

Mr. Philip: One of the things often talked about at the public accounts conventions that you and I attend on a regular basis is the whole field of public accounting is different from private enterprise accounting, there is a whole profession developing. Do you have any comments as to what, perhaps as a committee, we might look at in terms of assisting, from a professional point of view and promoting the development of that specialized profession? Do you see anything as a need for any special ongoing professional development in the field of public accounting through the setting up of a unique field of training as distinct from the mainstream training at the universities? I know that Ken Dye has expressed some comments on that


publicly. Do you have any comments that perhaps in Canada we have to be pioneer more in the direct development of the unique profession of the public accountant rather than a back-door offshoot of the mainstream of accounting?

Mr. Archer: I do not think there is anything specific that the committee needs to do. The auditors themselves across Canada are increasingly getting the mandate to do the broad-scope auditing, which I think you are referring to, and which is not done to any large extent by public accounting firms in the private sector.

In addition to that we have the Canadian Comprehensive Auditing Foundation. If you notice we make a substantial grant to them every year, as does every legislative office across the country, particularly Ken Dye. One of its jobs is to develop methodology and training courses for legislative auditors, or any auditor who wants to get more involved with this broad scope of value-for-money auditing.

From the training and emphasis on that area I think there is enough already. As far as--

(Tape P-1145 follows)



(Mr. Archer)

~~...from the availability of training and the right to do it that we have~~
~~enough staff to do it~~ any individual audit office is concerned the best thing the committee can do is take the office seriously, if you like, and actively review sections in the Provincial Auditor's report and show support in the office and for the function in that way.

Speaking for our own staff, from a morale standpoint, the activities of the committee in Ontario is one of the most active, if not the most active in the provincial public accounts committee, is great for morale because it sees its work is being recognized and somebody is interested in it. That is something worth doing.

Mr. Philip: One of the things that happens in this, and in any other field, is that the pendulum swing. Two or three years ago comprehensive auditing was the big stick on the block. Everybody was giving lip service to it. Am I right in saying there has been a backlash that certain governments are now screaming that you are getting into policy and we may experience a time when I think, incorrectly, governments are being so overly defensive of their territorial politicians, they are being so overly defensive of their territory that the Provincial Auditors may have to, not necessarily take a step backwards but at least pause for a little while? I am not saying this is in Ontario but there seems to be a backlash in some other provinces.

Mr. Archer: There has been a backlash from the standpoint that not all provinces were fast off the mark in giving their auditors the right to do this broader scope auditing. Ontario was fast. British Columbia and Alberta followed very quickly after Canada. Canada was the first to give that stability to the auditors.

Some provinces just said no. For example, Saskatchewan has refused to openly give the auditor that right. Newfoundland is another province that will not give the auditor the broad scope mandate. There has been a backlash in that some governments have seen the type of auditor's reports coming out, for instance, Ken Dye's, and even to some extent, what comes out of Ontario and some of the other provinces. They say: "Who needs this? We get enough problems without having an auditor criticizing how well we manage." Because of that the auditors have not been able to get that broad scope.

Mr. Chairman: You have exceeded your 20 minutes, Mr. Philip. We can get back to you if the other members do not have any questions. Do any members have additional questions? I have a couple before we get back to you, Mr. Philip.

Your estimate of increase is 28.7 per cent.

Mr. Archer: Right.

Mr. Chairman: I have a calculator but I have difficulty in managing it, it is going crazy here. You are basing it on your 1985-86 estimate rather than actual.

Mr. Archer: Yes.

Mr. Chairman: So your increase is somewhat higher than 28 per cent?

Mr. Archer: If you go actual, but then you have to wait to see what our actual is this year if you want to go actual-to-actual. We expect to spend most if not all the budget.


Mr. Chairman: I do not want to be critical of you not spending all of your budget. I think a lot of government agencies, when they do have a budget they want to make sure they spend it all. What you are indicating here was something almost \$1.6 million less in terms of your estimate.

Mr. Archer: Yes.

Mr. Chairman: The business of increasing staff, at the same time increasing use of contracted services, that seems to something of a contradiction.

Mr. Archer: It may seem that way. Some of this philosophy came out of meetings with the Board of Internal Economy over the years. It has never given us a hard time as far as increasing staff but it has suggested that maybe we should think more in terms of hiring staff as we need it from public accounting firms because a lot of our work is associated with the audit of agencies that have a March 31 year end. We have a very high--

(Tape P-1150 follows)



of
(Mr. Archer)

...So, with the 10 plans, because of the fact that we have a very high auditor staff resource period from about the end of April through to the end of July or August. Since that is normally a relatively down time for public accounting firms, year ends are primarily December 31, there is a nice fit. In other words, they have staff available that we can use in our peak time.

We try to go down the middle. We do not want to build up too much of a bureaucracy ourselves, by, every time need help, going out and hiring somebody full-time. We are trying to get a balance between full-time people and the use of contracted staff.

Mr. Chairman: You have a significant budget now. What do you do, in terms of, I am assuming you do some internal audits, but has an auditor ever been audited? What happens in those cases?

Mr. Archer: That is a favorite press question. We have an auditor and the auditor's statement. Actually, it is a traditional financial audit that public accounting firms do, expressing an opinion on well-known expenses for the year. We have not had a value for money of broad scope audit in our office. The question is, how do you know you are getting the value for your money from the auditor. I guess this committee is probably the best judge you could get. You think of the products you are getting and you then say, "What is this costing us? Is it a fair price?" All I can say in that regard is that, if you take the percentage of audit budget to provincial budget, we in Ontario are by far the lowest in Canada.

Mr. Chairman: I just wondered. In some states, though, the other elements that you get into, and simply not just how we feel about your work, there are other areas that you would certainly deal with in terms of other ministries, how supplies and equipment are being acquired, and that sort of thing. It seems to me that at some stage, it might be appropriate to--

Mr. Archer: I think you are right. There is nothing to prevent that kind of audit being done now. They uttered a ?? on behalf of the Board of Internal Economy. You could certainly suggest that they suggest a broad scope audit, but in any future revision of our audit act, maybe one will come up in the next year or two. It is fair to promise...?? We could build that right into the legislation.

Mr. Chairman: Okay, just one other question. The External Advisory Committee, the three former members of parliament, and I am curious as to who they are.

Mr. Archer: Yes, as a matter of fact, we had a meeting with that committee yesterday. The three MPP's are: Pat Reid,--you will notice how carefully I have represented all parties here--Pat Reid, a former Liberal--

Mr. Chairman: I think he is still a Liberal.

Mr. Barlow: ??Liberal labour.

Mr. Archer: I did not ask him.

Mr. Archer: --George Taylor, former Progressive Conservative member, and Jack Stokes, former New Democratic Party member.

Mr. Chairman: Is there a remuneration attached to that?

Mr. Archer: Yes. They get whatever the ??manual administration allows for per diem. I think it is \$100 per day, because we only meet two or three days per year.

Mr. Chairman: This is an order of council appointment?

Mr. Archer: No.

Mr. Chairman: Through your office.

Mr. Archer: Yes, right.

Mr. Chairman: I see.

Mr. Barlow: Who are the other people out there? Is Mr. Taylor ??included?

Mr. Archer: Rendall Dick, former deputy minister, deputy with the Attorney General, and Adam Zimmerman, the chief executive officer of Noranda mines.

Mr. Barlow: Thank you.

Mr. Chairman: Anything else before we go?

Mr. Philip: You are going directly in the direction I was going, Mr. Chairman, and I am going to deal with that. However, since I have the habit of sometimes running out the clock and then being told that my time is up, I wanted to deal with something else first.

That is, that since we are recessing for Christmas, I think it is appropriate for us all to thank the excellent clerking service that we have had from Doug Arnott. He has been invaluable in lining up witnesses, and so forth and taking care of everything that was necessary. He proved to be efficient, amicable, and invisible, as clerks should be, but he has been, nonetheless, reachable, obtainable, and helpful when we needed him.

Needless to say, words cannot express our appreciation to Helen ??Fritz. She has done an amazing job for us. It is...

P-1155 continues



(Mr. Philip)

~~...~~
~~...~~
~~...~~
probably the busiest committee in the Legislature. It is the one that has the highest profile, certainly, and the excellent research she has done for us, particularly during those very difficult summer months when we were sitting from nine in the morning untill 11 at night, is greatly appreciated by all members. She knows that, but it would be nice to have someone say that in Hansard. Maybe she can bring it home to her kids or something to show that all of us appreciate what Mommie is doing during the times that she is not at home because she is working overtime for us; at least her overtime and her hard work are being recognized. Somebody else may probably want to say something similar on that.

Mr. Chairman: Considering the time frame, I think that is appropriate right now.

Mr. Gillies: I do not know whether this is the appropriate time; I would certainly like to thank Helen for all her help over the period of time I have been on this committee. It really has been above and beyond the call of duty and, as Ed just noted, we were very aware during the summer months when we were sitting rather extraordinary hours of the difficulties those hours can pose for a busy staffer with a small child. We very much appreciated the extraordinary efforts that you brought forward.

Now, with regard to your going to the technology council--

Interjections.

Mr. Philip: I thought nobody knew about that.

Mr. Gillies: That came out--joking aside, I think that is terrific--

Mr. Philip: That is why I did not mention it.

Mr. Gillies: --and I know that you will bring a measure of activity to that area that hitherto has not been experienced. We certainly wish you well in your future endeavours and hope that you will remember your period of time with our committee as fondly as we will.

Mr. Chairman: For the edification of Mr. Philip, we dealt with this subject earlier--so that you are informed that I was not neglecting Mrs. Fritz.

Mr. Philip: I did not want to bring it up without--

Mr. Callahan: With one minute left, and in the spirit of the season, I would like to offer the same congratulatory messages on behalf of our party. I think anybody who can sit through meetings by politicians deserves the highest of praise and certainly the greatest reward. That is all I will say.

Mr. Chairman: Especially those who smoke at close range.

Mr. Philip: As someone who is married to a lawyer, I am sure that she has plenty of practice--never mind.

Mr. Chairman: In any event, do you have any further questions?

Mr. Philip: Yes, I had some further questions. I just wanted to comment to Helen that just because we are laudatory of her work now, this does not mean that we will not extract a quart of blood from her at some future time when she is called as a witness before the committee, and we will be just as tough in our questioning.

Ms. Fritz: I look forward to that.

Mr. Philip: The chairman was talking about the increase in the estimated contractual services, and you have estimated an extra three per cent in 1986-87. How do you determine the rate of payment for contractual services? Do you have a scale or is there an industry scale? How is this arrived at?

Mr. Otterman: We have a procedure whereby we contract three firms. The service of printing billing rates is done by the Institute of Chartered Accountants of Ontario and we get a copy, so we know approximately what the billing rates are. From there we shop for the lowest quote, and we have a list of the major firms, medium-sized ones and some small firms. We go down that list on a rotational basis.

As ??Doug mentioned, the summer is their down period when they are not as busy, so we can get some very reasonable rates compared to their normal peak season rates which apply throughout this time of year.


Mr. Philip: I would like to deal with retail office space. Is the Ministry of Government Services now charging back two per cent for retail space for all legislative offices?

Mr. Archer: Could you comment on that? That is my understanding, for all legislative offices--two per cent; they are charging back whatever the rent is.

Mr. Otterman: If you are in leased premises, they are charging back the actual cost of that lease for legislative offices.

Mr. Philip: Had the auditor's office remained in the Suncor building, would the chargeback have been--

(P1200 follows)



12:00

~~Mr. Otterman: If you are looking for a building that is~~
~~located in the downtown area, the Suncor building~~

Mr. Philip: ~~And the auditor's fee for the Suncor building~~
~~is significantly lower than the \$110,000~~
estimated by--?

Mr. Archer: That is the Suncor building. That covers the period from April 1 through the end of October.

Mr. Philip: What about the new office in the Atrium? How does that compare?

Mr. Archer: That will be considerably higher. Do we have some figures? I guess one of the appendices.

Mr. Otterman: It is a combination of the increased size of the facility and a different rental structure which we would have been into December 1, 1988 had we stayed in Suncor which was not feasible because there was not enough space available. The annual rental total cost will be roughly \$600,000 a year, somewhere in that category.

Mr. Philip: How many competitive bids on the leased accommodation did you accept or did you look at before you chose the Atrium?

Mr. Otterman: To start out with I think there were about 15 locations and in addition to that we surveyed another 25 and then narrowed it down to a short list of approximately eight locations.

Mr. Philip: Out of those eight then did you choose the cheapest?

Mr. Otterman: We did not choose the cheapest in absolute dollar amount but based on quality it was the second cheapest and the reason for that was the other building was a 26-year old building. Although we could not nail it down exactly the advice we received was that the major renovations that building could be in for would easily make up the differential between the second least expensive choice. There were matters with air conditioning units on the roof that were faulty, plus the amount of space was questionable and subsequent as to what was available because there were tenants on the adjacent floor. Although that landlord said that he thought he could get the space, although this happened after we had accepted the other one, the landlord pointed out that he could not get his tenants to give up the space on the second floor, the amount that we need, so it dropped off the list.

Mr. Philip: If I were to go to a major audit office that would be similar in size to yours, would I find that they were paying about the same in rent?

Mr. Otterman: No, you will find they are paying more because they are located further downtown. They have to have a more prestigious address in the downtown Bay, University, King location. Immediately your rent jumps \$10 to \$11 a square foot, just like that.

Mr. Philip: Have you looked at the possibility of moving further out

where space is less expensive and just keeping your main offices downtown? Is there an absolute necessity to consolidate everything in one space? We have a computer age with telephone hookups. Many of your people are on the road anyway doing their audits.

Mr. ARcher: That is true, but I think 75 per cent to 80 per cent of our workers are within a half a mile of Queen's Park, so being centrally located.

Mr. Mancini: We have some space in Essex county.

Mr. Philip: There is a lot cheaper office space if you go into parts of North York or parts of Weston which are within easy public transport.

Mr. Otterman: We started out with a central core area which we realized was a little too tight and we broadened that to at least consider from Bloor Street down as far as Dundas. Dundas really becomes the barrier because of the escalating rents from there downtown.

Doug gave the figure, about 75 per cent to 80 per cent. It is actually higher than that. With the Queen's Park head offices, the MacDonald Block, this area, and amazingly even with the agencies, are all within a very close proximity to this core. We did some rough--

P-1205-1 follows



(Mr. ??Otterman)

... with the Queen's Park ...
... the agencies, amazingly, are all within a very close proximity to this core. ... efficiency, if you like, estimates, and it was pretty easy to come up with \$65,000, for example, in down time by being another 10 minutes further away from this location because, after all, these people paid on average, \$35,000 professionals and up. We felt that was too big a tradeoff.

Additionally, we were advised of some buildings that were, for example, further north, around Yonge and Sheppard. Those rates were not any more competitive than the ones we were looking at down here. Actually, some of them were more costly.

Mr. Philip: The \$50,000 that you spent on redecorating, for an office of your size, sounds fairly low to me. Fifty thousand dollars is a lot of money to the average citizen, but it still seems low for an office of your size going in. Is that attributable to the fact you had a newer, more flexible building?

Mr. Archer: That is just the interior design cost. It is not the construction cost. The construction comes off. It was the leasehold improvement allowance that the landlord gave us for moving in.

Mr. Philip: Still, moving into a new premise, you expect a certain amount of interior design.

Mr. Otterman: That was tendered and we got a very good rate as well. The rates ranged anywhere from \$1.50 to \$3.

Mr. Philip: Can you just give us an example of what went into that? What did you get for your \$50,000?

Mr. Otterman: The entire design layout, they were responsible for determining what would be a good configuration, meeting with us, finding out what our needs are, including the furniture and furnishing needs. In effect, they planned the whole layout. That included preparing the preliminary drawings such as mechanical, electrical, air conditioning, all of that which then goes out for tender to the general contractors. In effect, they provided the complete package because we do not have that expertise.

Mr. Philip: I take it none of the furniture that is missing can be found over there.

Mr. Chairman: Remo has already checked it out.

Mr. Philip: This year ends the 100th anniversary of the Provincial Auditor and on this special anniversary, as we go into the 101st year, we wish you well for many years to come. You seem to be doing a good job. Sometimes you do not go as far as I would like to see you go, but with your new staff, it is hoped you will have an opportunity to do many other things, and also to broaden the scope of the provincial auditor's office, in terms of how broad a study you can do from time to time. We appreciate the work you have done and the co-operation you and your staff have given me, as a member of the committee. I know that Mr. Wildman, who has to be in his riding today for a special function, shares my views.

Since no doubt all members of the committee will be re-elected, we will

be working with you for many years to come.

Mr. Epp: I want to add my thanks to those of Mr. Philip and those of my colleagues. It should be noted that, although Mr. Philip has indicated the office is that old, the auditor certainly is not that old.

Mr. Archer: Not quite.

Mr. Epp: That is an important distinction we make.

Mr. Philip: Some of us are contributing to that.

Mr. Epp: Although we share grey hair, it is the same idea of having grey hair ??

Mr. Archer: That comes pretty early ??

Mr. Gillies: I want to concur with my colleagues' comments that we certainly do appreciate your hard work, sound thought and service to this committee provided by your office. I had the pleasure of representing our chairman and the committee as a whole at the celebration that was held to mark the 100th anniversary. I particularly enjoyed that evening because it was an opportunity to meet many members of your staff whom we would not normally encounter in the committee.

I think you have a very fine team indeed. We, in our party, certainly enjoy working with you and look forward to a long and fruitful association.

1210-1 follows



12:10

Mr. Archer: Thank you. I appreciate your comments.

Mr. Philip: ?? Liberals there ?? Mr. Gillies and myself.

Mr. ARcher: All members were invited.

Mr. Chairman: Are there further questions or comments? I think, Doug, Jim and John, the three individuals that we work most closely with, we all appreciate your efforts and look forward to working with you in the coming year. I wish you all a merry Christmas.

Before we leave, we need some votes. Shall vote 3801, including supplementaries, carry?

Vote 3801, agreed to.

Mr. Chairman: This completes consideration of the estimate of the Provincial Auditor and the supplementary estimates.

The committee adjourned at 12:12 a.m.

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STANDING COMMITTEE ON PUBLIC ACCOUNTS

RENTAL HOUSING LOAN
MEMBERS' PRIVILEGES

THURSDAY, JANUARY 22, 1987



STANDING COMMITTEE ON PUBLIC ACCOUNTS

CHAIRMAN: Runciman, R. W. (Leeds PC)

VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)

Barlow, W. W. (Cambridge PC)

Callahan, R. V. (Brampton L)

Davis, W. C. (Scarborough Centre PC)

Epp, H. A. (Waterloo North L)

Mancini, R. (Essex South L)

Philip, F. T. (Etobicoke NDP)

Pope, A. W. (Cochrane South PC)

Smith, D. W. (Lambton L)

Wildman, B. (Algoma NDP)

Substitutions:

Fish, S. A. (St. George PC) for Mr. Runciman

Reville, D. (Riverdale NDP) for Mr. Philip

Sterling, N. W. (Carleton-Grenville PC) for Mr. Pope

Clerk: Arnott, D.

Staff:

Malcolmson, P., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Housing:

Cornell, W., Deputy Minister

Corke, S., Manager, Housing Conservation Unit

Pitura, L. F., Assistant Deputy Minister, Social Housing

Bissinger, E. J., Manager, Housing Programs

Hill, B., Regional Manager, Central Ontario Region (Toronto)

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON PUBLIC ACCOUNTS

Thursday, January 22, 1987

The committee met at 10:13 a.m. in room 151.

RENTAL HOUSING LOAN
(continued)

The Acting Chairman (Mr. Barlow): I call to order this meeting of the standing committee on public accounts. Committee members and those in attendance, one item for today is in regard to the convert-to-rent program. We have here the Deputy Minister of Housing and other officials from the ministry. Mr. Cornell, you obviously know why you are here. Would you like to make a few introductory remarks and introduce your delegation?

Mr. Gillies: Rather ominous, is it not?

The Acting Chairman: I did not think I had to explain why he was here.

Mr. Cornell: You do not have your surgical gowns on, do you?

I welcome this opportunity to talk to you about convert-to-rent because it is one of our most successful programs. What we plan to do today is to give you an idea of the environment at the time the program started about four years ago--in August 1983, to be exact--and we will also show how the program evolved, how it changed so it could best meet its objectives. If it is the desire of the committee, we will put on a 12-minute slide presentation. Of course, we will answer the questions the members of the committee will have. It is a very good presentation, by the way; it is outstanding.

When the program was launched in 1983, the residential construction industry was in a depressed state. There was also a perception in the marketplace that conversions were not worth the hassle because of the red tape at the municipal level. On a brighter note, a joint study carried out by the ministry and the Association of Municipalities of Ontario indicated a great potential for creating new rental units from existing housing stock.

We wanted to come up with a truly innovative idea that would be a source of rental housing while at the same time doing something novel and unique: to make better use of existing properties. This approach would also avoid the need to develop new lands and put in expensive sewer and water pipes, roads and other infrastructure. The costs, then, to the property owner would be significantly reduced. Making better use of existing properties continues to be a key feature of the convert-to-rent program.

When the program was announced, we were inundated with requests for application forms, but the response rate was extremely poor. It became evident that many of the applicants were frequently ineligible because they wished to undertake conversions not included in the guidelines. This indicated to us that the range of possible conversions was far greater than we had expected. The answer was to expand the criteria in 1983, and this has continued as the program has evolved. We also saw a need to widen the availability of the program from the areas originally selected, Ottawa and Toronto.

We went back to the drawing board and revised the program. I make no apology for that. If a thing works, leave it alone; if it does not, fix it. For us, getting involved in the conversion concept was exploring new territory. It was, and continues to be, a unique initiative.

All our supply programs had, until this point, been handled by professional entrepreneurs. For the first time, government assistance for the provision of housing was being widened to attract the ordinary man and woman: the moms and pops, persons with small businesses. In order to encourage these applicants, our criteria had to be straightforward so that they could participate without the use of a lawyer or an accountant if this was what they wished to do.

Len Pitura, my assistant deputy minister in charge of delivering convert-to-rent as well as other programs, will be taking you through the convert-to-rent evolution and development in detail, how it started in Ottawa and Toronto and eventually became available across the province. But before he does that, I would also like to introduce Sue Corke, on my right here, who has been associated with the policy development of this program from an early stage.

I would like to clarify one important point about convert-to-rent. It is not a social housing program, but it does complement our social housing programs. A portion of the units that are created are rented on a geared-to-income basis to needy tenants, but our prime objective was to bring on stream new rental housing that might not otherwise have been produced.

As the members know, housing is a dynamic business. No one government program is going to solve all of the problems. For example, the Ontario Housing Corp. used to be the only ball game in town when it came to rent-geared-to-income housing. Now there are several sources of this type of accommodation, through the municipal nonprofit, private nonprofit, nonprofit co-operative projects, our Renterprise program and convert-to-rent.

I am genuinely proud of convert-to-rent. It has turned out to be extremely popular, especially in smaller municipalities across Ontario. Two thirds of the units have been committed outside the province's 10 most populated urban centres, and between 80 per cent and 90 per cent of the projects are for fewer than 10 units. That is not bad for a made-in-Toronto program.

As I said, a key to its success is its accessibility. It is available to the couple with the store on Main Street, Ontario, who want to convert the warehouse above the store into an apartment or two. At the other end of the spectrum, it is open to the big builder.

In many cases, offering the interest-free loan provides just enough financial incentive for a small business person to go ahead. If a builder has to pay high interest rates on a loan, there is a chance he or she may simply decide not to go ahead with rental housing and may even consider condominiums.

Convert-to-rent is an incentive program, not an enabling program, as some portray it; and it is working because we listened to the people we are dealing with and developed an efficient, streamlined delivery mechanism.

For projects under 10 units that meet program criteria--and that includes municipal approval--loans can, in most cases, be approved within a couple of weeks. Proposals for larger developments take longer, and even then the process is faster than with other programs.

Convert-to-rent requires less taxpayers' outlay than programs such as nonprofit. The upfront convert-to-rent loan goes on a repayment schedule in year 10 and is completed at the end of year 15, whereas the government subsidies involving operating assistance for nonprofit housing go on for 35 years.

Mr. Chairman, members of the committee, if you look at part C in your briefing book--and I believe these have been given out--you will see a long list of municipalities that have given their blessing to the program. They range from A to Z, from Alexandria in the east to Zurich in western Ontario and about 300 in between. Many of them are not large enough to warrant the construction of major projects, but they are able to produce needed housing through convert-to-rent; and the program has stimulated employment by creating work for local tradespeople.

To quite an extent, the success of the program has been through the ripple effect, people telling people how this program really works. We have had enquiries about convert-to-rent from other jurisdictions in Canada, and 25 letters have been sent to us from the United States wanting to know how it works and how they can apply the concept to their own markets.

I am confident that we have pioneered an innovative approach to the provision of rental housing that will be around for a long time.

We do have this presentation that I am sure the committee would find most interesting if they would like to see it.

The Acting Chairman: Would the members of the committee like to see the slide presentation?

Mr. Epp: I think it is an excellent proposal, and I would be glad to buy a little time, Mr. Chairman.

The committee viewed an audio-visual presentation at 10:21 a.m.

1032

Mr. Cornell: Mr. Chairman, if I may, I would like to turn it over to Mr. Pitura, the assistant deputy minister who supervises this whole program. He might have some extra comments to make.

Mr. Pitura: I have just a bit on that production. I want to assure you that we did not produce it especially for this committee. This is a vehicle that is used by our field staff in response to any groups of people or individuals who want to know what the program is about. It is an attempt to market the idea. That is the reason we have produced it in the form it has. There are also a lot of other excellent examples of conversions that we did not have time to go into in that AV production itself.

I would like to expand a bit on the points made by the deputy in his opening statement. I want to go back in history a bit to 1982-83. At that time, of course, the economy was down, the government was under really restrictive constraints and we had very few options for new dollars. We had to be very creative, as best we could, with the resources at hand.

At the same time, we were working closely with the Association of Municipalities of Ontario in a study on better use of existing resources, intensification of our land and services, as you saw in the presentation a few

minutes ago. With that, we should also keep in mind that the home-building industry was in a severe recession at that time. There were no, or very few, rental stock units being produced without some form of government assistance. That was the environment at that time.

When we completed our study with the Association of Municipalities of Ontario, we looked at what could be done with respect to conversions, intensification of land and better use of existing services. We know that one of the problems--and certainly this was shared by our colleagues at AMO--was getting municipal approvals.

Having said that, we did receive in May 1983 approval for \$25 million for a conversion type of program of which \$18 million was for convert-to-rent and the balance was for two demonstration programs called add-a-unit and conserve-a-unit.

Initially, because of the uncertainty, we were not certain how this program would be accepted throughout the province. We had targeted very closely to two areas with low, low vacancy rates: Toronto and Ottawa.

We advertised this and announced this in August 1983, and as the deputy has already mentioned, we found out very quickly that there was only a marginal takeup. We had interest there, but of the number of applications or inquiries received, only a small number were converted into actual applications. For example, as of September 9, 1983, we had 713 application packages forwarded out to interested people and we received only 17 applications back.

Again, just to give an indication that we were constantly monitoring and evaluating this program, recommendations were made that it be expanded to an additional 12 or 13 municipal areas, again where the vacancy rates were very low. We publicized that in newspaper ads in November 1983. We also made some slight changes to our program criteria at that time. For example, we indicated that conversion of nonresidential space in residential buildings was now eligible. We also indicated that hotels and motels were eligible for conversion.

Again, during this period, we were receiving a tremendous number of letters from across the province from heads of councils of smaller municipalities saying, "Why did you exclude us?" The decision was made by the minister of the day to expand the program to the rest of the province, so on December 16, 1983, we did expand the program throughout the whole province.

Then in April 1984, we again changed some of the rules and criteria relating to the program as we got more experienced. Our field offices were bombarded with interest, but some of them said, "I cannot do it this way," or "I cannot do it that way." It became evident that more changes were needed, again keeping the objective in mind that we are trying to have affordable, moderate-rent units available across the province and trying to use this as a stimulus or an incentive. The criteria were again altered slightly. I will read out of the book so I do not err here:

"A change of use of nonresidential properties to residential whether or not demolition was required; and projects involving intensification of use of multifamily residential sites."

That was in the spring of 1984, where we changed and expanded the criteria.

Again, we wanted to emphasize, as the deputy stated in his earlier remarks, that the program was an incentive program. It was to bring into the rental housing business people who, up till then, had no interest. For example, there were other disincentives to getting into the rental market, such as the municipal approval process. The whole idea of becoming a landlord was, in the eyes of many people, something they did not want to entertain. That is why we have always stressed in our field operations and in our discussions with proponents that this was an incentive program to bring people into the production and operation of rental units.

Just to talk a little bit about the allocation, we did get 2,600 units in 1983, and very quickly after we expanded the program it was becoming so successful we had to request additional funding and approval for more units. This did take place in June 1985, when the original 2,600 units were extended by an additional 1,800 units to a total of 4,400; so in June 1985, convert-to-rent was enriched by 1,800 units.

Following that expansion, in the latter part of 1985, the program was extended further. It was announced on December 16 that an additional 6,000 units were added to the already approved 4,400, making a total of 10,400 units, with some additional refinements to the program. These were, namely, allowing single-family conversions or additions, allowing non-self-contained units and making additional dollars available to provide units to accommodate the handicapped.

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That, basically, was the evolution and development of the program, almost to this date. We have held workshops with our field staff to ensure there was a reasonable amount of compatibility among the regions in the delivery of this program, because different regions were receiving different applications from different proponents. This was a regular part of our day-to-day activity in trying to ensure a high degree of uniformity and delivery across the province.

We have also included in your package--and I will not go into it in detail--two flow charts which attempt to portray the development technique that is used by head office, our field offices, the Ontario Mortgage Corp. and the proponent himself.

We have divided it, for administrative reasons and for economy of resources, into two major categories. One was for projects under 10 units and one was for those of more than 10 units. Those with more than 10 units would have a greater emphasis placed on the pre-approval process with respect to inspections, appraisals and that sort of thing. I was not intending to go through the flow charts in any detail.

Mr. Reville: Good.

Mr. Pitura: With that confirmation, I will not spend any more time on that.

In your text, you have part A, and I have very quickly synopsisized that. In your text, we have given you an idea of some of the dollars and approvals, again summarizing what I have already stated. Under part B, we have 10,400 units, which equates to just under \$70 million as the budgetary approval for this program as of today.

On the next page, we have shown you under part B the number of units committed as of December 31, 1986. I am just waiting for someone to question the half unit there, because I know somebody else has a better answer than I have. That really has to do with a non-self-contained unit, which was part of the program extension announced in December 1985. You can see we have roughly 6,000 units committed as of December 31, with a dollar outflow in the order of \$41 million.

We have tried to give you, under part C, the whole information package that we have, which we use as a regular administrative monitoring process on all our convert-to-rent projects across the province. In it you will see detailed information about dates of applications received, commitments issued and that sort of thing. You see the amount advanced, first advance, second advance and that sort of thing. For example, on the normal convert-to-rent program, we advance 50 per cent at 15 per cent of completion and the remaining 50 per cent at, say, 50 per cent completion of the project.

The other point which you might pull out of the summary sheets in part C is that a lot of the projects are related to communities scattered across this province. As the audio-visual presentation indicated, there are about 300 communities. Roughly two thirds of the units committed to date are in what we call smaller municipalities. That has been, in our estimation, a real blessing, because for all intents and purposes, large rental construction projects in these communities were difficult to mount without very heavy government incentives.

Mr. Epp: What do you define as a small municipality?

Mr. Pitura: I guess a small municipality would be something less than Kitchener-Waterloo, Windsor--

Mr. Reville: That is an enormous municipality.

Mr. Pitura: --Sudbury or Thunder Bay. Basically in the housing business, it is the census metropolitan areas that are excluded. There are about 10 of them, including Metropolitan Toronto, obviously, and Ottawa. You are talking about places like Blind River--

Mr. Epp: Wawa.

Mr. Pitura: --Prescott, Wawa.

Mr. Wildman: Amherstburg.

Mr. Pitura: Amherstburg. It is anything under 100,000, is it not?

That was the gist of my comments. I echo what the deputy has stated. We have had many indications of interest across this country and from the United States on this program. I received something on this the other day from the state of Kentucky. The cabinet of the government of New Brunswick has seen a presentation similar to what you have seen this morning. Nova Scotia has indicated a strong interest in this. Our Quebec colleagues have also stated--

The Acting Chairman: Excuse me, Mr. Pitura, Mr. Andrewes has just called a point of order. Excuse me, it was Mr. Gillies.

Mr. Gillies: My hair is not that white yet.

A gentleman acting for Ivan Fleischmann at Canadian Intercorp, one of the principals in the Huang and Danczkay matter which we will be reviewing before this committee this week and next week, has just attempted to serve me with papers from the Supreme Court. He is entitled to his opinion, but I would like a ruling from the chairman as to whether or not, under the terms of the Legislative Assembly, I can be served with papers.

Further, as a member of this committee, I see this as a flagrant attempt to intimidate a member of this committee when the matter which Mr. Fleischmann has some problem with is the very matter that is before this committee at the present time. I told the gentleman with the papers, who was a messenger of some kind, that while I physically have the papers in my possession now, I did not accept them and would be waiting for a ruling from the chair or if necessary from the Speaker, to determine whether this can be done.

Mr. Wildman: My colleague, Mr. Sterling, is a lawyer. I am not a lawyer, but I will be interested in his comments. I am aware that it is established practice in this assembly that members of the assembly cannot be served with such papers on these premises.

I recall a case a few years ago where there was an attempt to serve a colleague from Oshawa with similar papers. The Speaker at that time ruled--and the clerk may correct me if I am wrong--that it was not permissible. As members of the Legislature, we cannot be--I am careful in my use of words--harassed in such a way as to make it difficult to carry out our responsibilities as members of the Legislative Assembly in raising issues of importance to the people of the province.

As a member of the standing committee on public accounts, I find it completely unacceptable that a member of this committee, which is charged with the responsibility of ensuring that public funds are spent wisely and in a way approved and authorized by the assembly, should have an attempt made to serve him with papers at the very time we are dealing with a particular matter that is before the committee.

I hope my comments are helpful to the chairman, but the clerk may clarify the situation further. I encourage you to consult with the Speaker's office to get a ruling on this matter. I understand that such an attempt is completely unacceptable.

Mr. Epp: I find this somewhat surprising. I caution whoever the gentleman is to withdraw any attempt he has made to try to influence the workings of this committee. Lawyers trained in legal matters in this province should know better than to try to serve members of the Legislature with papers in this particular jurisdiction because they know it is not legal; they know it is not possible. Whether they are trying to get some free publicity or whatever they are trying, I am surprised. They should know better.

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As far as I am concerned, somebody is trying to create a little bit of mischief and should not get away with it. As far as we are concerned, we should ignore it from the standpoint of the public accounts committee and proceed as we had intended to do. Certainly, it should not in any way intimidate us or influence us in our responsibilities as members of the public accounts committee and as members of this Legislature.

I would associate myself with Mr. Wildman's comments, that we ask the

clerk to investigate this particular matter. In the interim we should proceed as we had intended to proceed.

Mr. Callahan: It is my understanding that you can be served but I do not think the process can be proceeded with. The purpose behind that goes back historically; they did not want members of the Legislature found in default of judgement, arrested and thrown in debtor's prison. I think that is the historical background.

Mr. Gillies: I do not think I owe any money.

Mr. Wildman: If I could be helpful on that--

Mr. Callahan: They can be served but it would be wise--

Mr. Wildman: If I can give you a personal experience--

Mr. Callahan: --for a servee or someone in this official capacity to notify the powers that be that it was served on a member during the current session of the Legislature.

Otherwise, the affidavit will simply say they served Mr. Gillies on such and such a date and when the time goes by, they can proceed.

Mr. Wildman: It might be helpful if I gave you a personal experience--

Mr. Chairman: I have Mr. Reville's name down. He wishes to--

Mr. Reville: I accede to the wonderful, encyclopaedic knowledge of the member.

Mr. Wildman: I have a personal experience that may be helpful to the committee. A couple of years ago I was a witness to a traffic accident that involved charges and my presence was requested at a trial or a court hearing during the session of the Legislature.

It was impractical for me to be in northern Ontario at the time. I phoned the crown attorney and informed him of that. Initially, his assistant indicated that they might serve me with a subpoena.

At that time, I checked with the Clerk of the House and was informed that when the House is in session a member of the Legislature cannot be subpoenaed. That is not the same kind of thing as here, but in that sense this place is considered to be the highest court. A member of this court--if you want to use the term--or the Legislature cannot be subpoenaed by a lower court from this place.

Mr. Reville: I find this turn of events very troubling indeed. There are two important issues and I would like to see how the committee feels about this.

Clearly, Mr. Gillies may have cause to wonder whether his privileges as a member of the House have been abridged by this action and it is totally appropriate for him to raise that matter in the appropriate place. I am glad he raised it as quickly as he has.

I also wonder whether the committee might feel that its job as a

committee is being threatened in some way and whether it might be appropriate for the chairman of the committee to lodge a protest on behalf of the committee that a matter under our jurisdiction and totally within the parameters of this committee is somehow being interfered with. I take a very dim view of that.

We are glad today to have the officials from the Ministry of Housing to explain the program. We are going to ask questions about the details of the Huang and Danczkay loan and the involvement of Mr. Fleischmann. I think this is an attack not only on Mr. Gillies, but also on the whole nature of the public accounts committee.

I feel very strongly that it might be appropriate for the chairman to join in a sort of overall protest an action of this kind.

The Acting Chairman: I have two more speakers on this point of order, Mr. Sterling and then Mr. Gillies.

Mr. Sterling: As a longtime member, as Mr. Mancini has been, of the Legislative Assembly committee, which was before that the procedural affairs committee, I have never in the 10 years that I remember, ever seen such a blatant case of intimidation on the part of somebody in this province against a member of the Legislature or a committee of this Legislature. I will tell you, when you are not only served--which is on the very face of it, within the Legislative Assembly Act while you are in session, not good service--but when you are served in the committee which is considering the matter in front of the other members of the committee, what kind of intimidation is this guy Fleischmann up to? This guy should be called in front of the bar of the House and dealt with.

I have never seen such action taken by a man who is obviously well-informed and knows what he is doing. It is disgraceful. There should be some method to bring Mr. Fleischmann before the bar of the House and deal with him in a very stern manner, because this is specifically what the Legislative Assembly Act is getting at in that particular provision, in terms of suing people for saying things they believe are their political right and obligation to say. This just riles anybody who believes in this process. It is absolutely amazing.

Mr. Gillies: Briefly, I wanted to apologize to the witnesses for interrupting the flow of your testimony in raising this.

Mr. Wildman: You did not interrupt it.

Mr. Gillies: I did. I did feel it rather important, though, and, as you know, under the rules of the House, a matter of privilege or order should be raised immediately.

I want to ask, if I could get some guidance from the chair, and I know this might be difficult, Mr. Chairman, because we do not have a heck of a lot of precedence to deal with. One of the reasons I raise it now is that I would like some guidance as to whether in law the papers have any standing, having been served in this committee room, and frankly, because I am not a lawyer myself, I am not sure that I should have accepted them.

Mr. Reville: There is a supplementary on that, too.

Mr. Gillies: The other point is, I want to assure my colleagues on

the committee that if indeed this is an attempt at intimidation, it is not working, because it has not affected, or will affect, my willingness to proceed with this matter.

Mr. Reville: May I ask a supplementary on that?

The Acting Chairman: I still have a list of speakers here and I think it is all supplementary to the point of order, so I can go through the list. I have Ms. Fish, Mr. Wildman, Mr. Epp, and then Mr. Reville.

Ms. Fish: Thank you. I want to echo the comments that have been made about the most curious coincidence of timing and location of this attempt, which I agree can only be interpreted as harassment and an attempt to throttle a member of this committee in performing the proper work of the committee, and, in the course of it, to have the effect of interrupting the committee's ability to discharge its duty as a whole in this matter.

I would add two pieces of information I find supporting that in a very serious way. One, I seem to recall that this action commenced the day that the motion was going to be put into the House to refer this to committee for a complete exploration. Now, on the day that we are actually to get at some of the questions, we have an attempt of service on a member, which on the face of it is clearly inappropriate.

I wonder, colleagues, whether you are aware that the research assistant who has been named occasionally in the media as assisting our colleague the member for Brantford (Mr. Gillies) in researching the matters to be questioned, has also been served here in this building in the same action. If that does not demonstrate an attempt to interrupt the ability of at least one member of this committee in this Legislature of discharging his duty, I am hard pressed to find a better example.

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Mr. Gillies: For the information of committee members, the papers name--where are they? Everyone is having a look--me, Ms. Artmont, my executive assistant, the Toronto Sun Publishing Co. and two reporters of the Toronto Sun, Mr. Ganley and Miss Comeau, and it is in the amount of \$1 million.

The Acting Chairman: I see. That is a nice round figure.

Mr. Gillies: Good luck. They do not know what we are paid around here, obviously.

Mr. Wildman: Mr. Chairman, I would like to suggest one thing and then I would like to move a motion, if you find it in order. I suggest that the clerk consult with the Clerk's office as to the question of the legality of serving papers on a member when this House is in session.

I would like also to move a motion that the committee report this incident to the House this afternoon and request through the Speaker that the assembly refer the whole matter to the standing committee on the Legislative Assembly for investigation and report back to the House as soon as possible.

I move that, if it is acceptable to my colleague Mr. Gillies.

Mr. Gillies: It certainly is, Mr. Wildman. I thank you for the motion.

The Acting Chairman: Perhaps we should hear the speakers first and then we will deal with the motion. Mr. Epp.

Mr. Epp: As I indicated earlier, I am very much surprised and astounded at the proceedings and the turn of events that have taken place this morning. I agree with my friend and colleague Mr. Wildman that what we should do is refer this matter to the procedural affairs committee and, of course, report the matter to the House at the earliest possible moment, which I expect the chair will do this afternoon.

Obviously, it should not in any way impinge on the proceedings that are taking place in this chamber with regard to the convert-to-rent program, and I think we should proceed as we originally intended to proceed. I do not think that it in any way compromises Mr. Gillies's participation in the discussions here or that it in any way compromises his situation. I would not read it so and I would think my colleagues would not read it so. Therefore, I think we should proceed as originally intended and the chair should report it.

Mr. Reville: The question of whether the service is legal is not the point here. The point is that the service constitutes harassment of a member of this Legislature in the conduct of his duties. As I said before, it has serious implications for the public accounts committee as a whole in the performance of its duties, and a number of concerns flow from that.

In fact, I think it is appropriate for this committee to consider engaging a solicitor with respect to this matter to assist in whatever defence may be required of Mr. Gillies as a member of this Legislature. I will make a motion to that effect when we get rid of the other motion.

The Acting Chairman: We have not really entertained any motion as yet. We want to deal with this point of order so we can move a motion. I think that is necessary.

Mr. Callahan: I think we should adjourn to find out from the clerk whether the service is effective before we start jumping into the other areas. That is critical. The claim that is made is one for libel. I have some doubts as to whether it interferes, as Mr. Epp said, with our work here in this committee, because we have a privilege, both here and in the House, against any statements that are made within the confines of this room.

In that respect, it does not interfere with any statements made by any member of this committee, but before we take the other steps that are proposed, I suggest we find out whether, in fact, the service here was appropriate. I would like to find that out first.

Mr. Wildman: We should find that out, but it should not hold up what we are doing.

Ms. Fish: I think it quite appropriate that we find out the answer to that question, but I can see no reason why this committee should be adjourned pending the response when we have officials before us. I am very anxious that--

Mr. Callahan: All right, let us get on with it. Let us send out for an opinion while we are sitting.

The Acting Chairman: The clerk is attempting to find out.

Mr. Sterling: Mr. Reville has made a very salient point. Whether the service is good or bad, it was an attempt to serve a member of this committee with a document which sues him for \$2.7 million. If anybody wants to argue that is not intimidation, I do not know what is intimidation. Most citizens of this province, including any member of this Legislature, are not happy to be sued at any time for any amount of money, because it involves a great deal of time, energy, etc., but to be sued for those kinds of dollars, and handing this committee one, as I said before, is unbelievable.

We probably will not resolve the matter of what is going to happen with this writ at this time. I just hope the committee's deliberations will be as true and to the point as they might have been before this writ was served. I do not think that is a possibility.

Mr. Reville: Give us a bit of time to transfer our assets, and we will carry on here. I have about 20 cigarettes here that I am trying to protect.

The Acting Chairman: I am checking with the clerk. The clerk is attempting to find out whether the serving of this is legal in these premises. There is not a clear answer to that at the moment. That will be coming.

Certainly, we would be prepared to accept the motion that we report this matter to the House, probably with a suggested reference to a committee to investigate and report back to the House. In the meantime, my best advice from the clerk would be to continue, after receiving a motion and direction to report to the House. Drafting a report to the Speaker and to the House probably should be guided by our subcommittee.

Mr. Sterling: Could I say one more thing, perhaps to assist my friend and colleague? If I were legal counsel for my colleague, quite frankly, I would advise him to keep his mouth shut on this matter, at least until he understood his legal status under this proposed suit. For him to ask questions, to further probe into the matter, may be imprudent; I do not know. I am not sure of all the ramifications of exactly what is going on at this stage of the game.

I do not know how he feels on that matter. He may be much braver than I, but as a close, conservative lawyer, that is what I would advise him to do.

Mr. Reville: May I ask a question of Mr. Sterling?

The Acting Chairman: Sure, go ahead.

Mr. Reville: I assume that what is said in this room is privileged, but there is no reason why somebody cannot look at the transcript and use what cannot be produced in a court as a clue, as it were, to find other evidence that may not be privileged communication. Is that the kind of thing you are worried about when you are trying to advise your colleague?

Mr. Gillies: I think both the points my friends have made are valid. First, in response to what Mr. Reville has said, that is right. I am fully aware that anything I say at the table of this committee is privileged, but my personal ethics and my way of doing business have always been that anything I will say in the Legislature or in a committee, I will say out in the hallway.

I have been in some pretty tough battles with the government in the last year, but I have never said anything in committee or in the House that I would

not say outside of privilege. Like all of us, what I say, I stand behind. I am torn on the point my colleague has made. If we do not proceed with this investigation, then if this is an attempt at intimidation, it is working.

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Mr. Wildman: It is working. That is right.

Mr. Gillies: On the other hand, because of the ethic I just spoke to, I would be reluctant to question the witnesses regarding 300 Queen's Quay West until I get some legal advice and know the legal standing because, as I said, anything I say here I will say outside.

Mr. Epp: Perhaps I can add to that. I am not a lawyer but it has been shown to us clearly on previous occasions that someone cannot be served. As I understand it, the fact that they have served him is null and void because he cannot legally be served here.

Mr. Reville: He can be served outside the door.

Mr. Wildman: Not in a session of parliament; not when this House is in session.

Mr. Epp: As I understand it, Mr. Gillies was called out and he was served just outside the door of this chamber.

Ms. Fish: No, he was not. He was served inside the room.

Mr. Gillies: Inside here.

Mr. Epp: Irrespective of whether it is inside or outside, the same thing applies in this whole building. You cannot even be served in your office.

Mr. Gillies: I do not disagree with you, Mr. Epp. That would be my feeling too, but in this particular circumstance I would sure as heck like a ruling from the Speaker so I know exactly where I stand.

Mr. Mancini: Do you want a short adjournment?

Mr. Gillies: If the committee agree to a short adjournment. It might be half an hour.

Mr. Sterling: Mr. Chairman, if we adjourn--

The Acting Chairman: Mr. Sterling, Mr. Wildman is first.

Mr. Wildman: I understand what is being said here, and if I can be facetious for a moment, I operate from the opposite approach to that of Mr. Gillies. I never say anything behind the barn that I would not say in here. I am concerned about the suggestion that we adjourn. It may seem a little bit small or symbolic, but it seems to me that if we adjourn, we are bending to the apparent attempt to intimidate. I do not think we should adjourn.

I understand Mr. Sterling's advice as a solicitor that obviously someone in a situation such as Mr. Gillies's should be careful until there is a ruling. However, my understanding is--again, I preface this; I am not a lawyer--that a writ cannot be served, not just when the House is in session but within 30 days of the House being in session, either before or after, and not just in this building but anywhere.

If that is the case, it is inappropriate for this to have been attempted, and I agree with my colleague that it is no less important for us as a committee whether this is legal and can be done than it is for Mr. Gillies. Therefore, Mr. Chairman, if you will entertain the motion, I will move that the committee report this incident to the House this afternoon and request through the Speaker that the Legislative Assembly refer the whole matter to a committee for investigation. I think it would be the standing committee on the Legislative Assembly.

I will move that motion and then add that personally, as a member of this committee, I believe we should then proceed with the matter before us. I think all of us resent what has been attempted. I am sincere when I say that I do not see this as simply and solely an attempt to intimidate Mr. Gillies; I see it as an attempt to harass and intimidate the whole committee, and by extension, the Legislative Assembly. That is unacceptable and for that reason, I do not believe we should adjourn. We should proceed, and I ask that my motion be put, if it is acceptable to Mr. Gillies.

Mr. Gillies: I agree. Let us go ahead.

Ms. Fish: That is right. Let us go ahead.

The Acting Chairman: With the indulgence and acceptance of the committee, I will accept that motion. I have two other speakers. Perhaps they could speak to the motion and interject any other comments while they are speaking to the motion. The two speakers are Mr. Sterling and Mr. Callahan. I will accept the motion that this matter be reported to the Speaker and to the House immediately. We recommend that it be referred to a standing committee.

Mr. Wildman: With the suggestion that it be the standing committee on the Legislative Assembly but the assembly may decide otherwise. That is the only place to go with it.

Mr. Callahan: Are we speaking to the motion of continuing? I would like to speak to that. I think we should. The purpose of the privilege in the Legislature and in committees is to allow the very essence of a parliament, to be able to speak your mind.

Mr. Wildman: Exactly.

Mr. Callahan: I doubt that the Hansards of this are any less privileged than the actual words, unless Mr. Gillies chooses to waive that privilege, and I am not sure he can even do that. I think we should get on with it. We have the people here. Let us deal with the matter.

The Acting Chairman: Does everybody understand?

Mr. Reville: Would it be acceptable to Mr. Wildman to add to his motion to include in the report to the Legislature the suggestion that legal counsel be provided for Mr. Gillies?

Mr. Epp: Is that not premature?

Ms. Fish: I do not think it is premature at all.

Mr. Epp: I am prepared to support the first two items.

Mr. Reville: I do not think it is premature because the question of

whether service is legal or not is a legal question. You say it is not legal, my friend, but you are not the judge.

Mr. Wildman: As the mover of the motion, I accept that as a friendly amendment if it can be worded in such a way that the committee is recommending the hiring of counsel, if that is found to be necessary, and just leaving it at that.

The Acting Chairman: The clerk has suggested that the motion say, "the hiring of counsel," but by whom?

Mr. Epp: We should look at that whole thing.

Mr. Wildman: That is a good question.

Mr. Epp: I am not necessarily opposed to it. It brings forth a new dimension. We do not want the hiring of counsel thrown on us. Someone should look at it, whether we can, whether we should and so forth. We can always have another meeting and recommend that. At this point, I respectfully ask Mr. Wildman in a friendly manner to delete that for the time being. If we are going to do it to get unanimous consent on this thing, let us not do it at this time.

Mr. Callahan: There are also precedents. There is one in the House of Commons where André Ouellet was served with documents. Perhaps that should be looked at in terms of how it works in terms of counsel.

I do not think we should go on with that. Let us get on with the business of the committee. I support that motion, but I would like to help Mr. Reville withhold the other one. Nothing is going to happen for at least 10 or 20 days or whatever the period is. We do not have to vote on that one and waste the committee's time in discussing it. Sorry, that is the wrong word. It is not wasted because it is a matter of concern for colleagues of the Legislature. But let us get on with the business of the committee.

Mr. Wildman: Mr. Chairman, it might be helpful if you could have the clerk read the wording of the motion as he has it now for the members of the committee so all of us know exactly what my motion was.

The Acting Chairman: It depends on whether you are willing to accept Mr. Reville's suggested further amendment.

Mr. Wildman: Yes, I said I was willing to accept that.

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The Acting Chairman: Could the clerk please read what he has down?

Clerk of the Committee: Mr. Wildman moves that "the standing committee on public accounts report the incident to the House"--

Mr. Wildman: This afternoon.

Clerk of the Committee: --"this afternoon and request reference of the matter to the Legislative Assembly committee for investigation and report to the House as soon as possible, and further move that the committee recommend the engaging of counsel if required."

Mr. Callahan: Can we have a division on the final item, Mr. Chairman?

Mr. Epp: With due respect, Mr. Wildman, we all know what incident we are referring to but we should delineate the incident we are referring to in the motion.

Mr. Wildman: I agree: The incident of the attempted serving of Mr. Gillies, a member of the Legislature Assembly, with a writ during the session of the assembly.

Mr. Epp: During the public accounts.

Mr. Wildman: During the public accounts committee this morning.

Mr. Sterling: We do not want to show that Mr. Fleischmann has intimidated Mr. Gillies or the members of the committee. The facts are that if somebody walked into this room and served Mr. Gillies along with others with a writ demanding \$2.7 million or asking for \$2.7 million in damages, in talking about whether we should proceed or should not proceed, as Mr. Wildman said, "Maybe Mr. Gillies will be more careful." That is intimidation to a lesser degree.

Mr. Wildman: Exactly; I agree.

Mr. Sterling: I am only substituting today and therefore I do not know the full repercussions of postponing the hearings. Quite frankly, I do not know whether you can proceed with these hearings at this stage of the game without first having some clarification as to what is happening here. It is nice for us all to say, "The service is not good and you cannot be sued," and all the rest of it, but all that is our opinion. Nobody has sat down with the facts to determine what his legal position is and that kind of thing.

Mr. Wildman: On a point of order, Mr. Chairman: I fully understand what my colleague Mr. Sterling is saying. The question of whether or not we as a committee proceed this morning is a legitimate one to consider, but it is separate from the motion. I encourage the committee to act on the motion because I consider this a matter of extreme importance, one that this committee should proceed with and report to the House as soon as possible. If it is, as it appears at first glance to be, an attempt to intimidate Mr. Gillies and this committee, and if the committee considering the issue finds it to be as it appears now to be, then I think the perpetrator of it should indeed be called before the bar of the House.

By extension, this is an attempt by some person cavalierly to intimidate the Legislative Assembly to influence how members of the assembly will carry out their duties, and that is completely unacceptable. For that reason, I hope the committee will act on my motion.

The Acting Chairman: On your point of order, whether we continue with the hearing this morning is not part of the motion.

Mr. Wildman: That is right.

The Acting Chairman: We can vote on it and then discuss whether we are going to continue.

Ms. Fish, you had your hand up a few seconds ago.

Ms. Fish: I was simply going to make a point similar to that made by Mr. Wildman and indicate that I have a number of questions on the convert-to-rent program and specific projects within Toronto. I would like the opportunity to ask those questions beginning today if it is possible for us to do it at this sitting.

Mr. Callahan: The motion that has been made has a number of amendments; I can certainly vote for the first two parts of it but I have some reservations on the third part.

Mr. Reville: Why do we not vote on the amendment first? If you cannot support it, you do not have to.

Mr. Callahan: All right. As long as it is divided. I do not know whether we are establishing a precedent that does not apply in the House.

Mr. Epp: I wonder whether Mr. Wildman will look seriously at the last part and have the clerk look into the aspects of having a solicitor, as opposed to hiring one. Looking at the pros and cons of it from the standpoint of whether we can do it legally and what kind of duration it has, etc., are the kinds of things we should look at. I would like to have a report back from the clerk on that as opposed to the actual hiring.

I would very much like to have unanimous support on this motion. We would be glad to give it but I have a little difficulty with this committee deciding to do something without knowing technically whether we can legally do it. That is where the question lies.

Mr. Wildman: If it is in order I would be quite happy to have those two matters divided.

The Acting Chairman: Can we treat the second matter, the recommendation that legal counsel be hired, as an amendment and then deal with the amendment before the motion.

Those in favour of the amendment to engage counsel--

Mr. Gillies: On a point of order, Mr. Chairman: Before the vote is taken could I have--

Mr. D. W. Smith: You are even putting it into another committee. The question should go to another committee.

Mr. Gillies: Can I ask the chair for an opinion as to whether I would be in conflict if I vote on this motion because if counsel is retained it would be to my benefit.

The Acting Chairman: I would think yes.

Mr. Gillies: Then I will abstain.

Mr. Reville: On a point of order, Mr. Chairman: I am going to try some wording on you, if you do not mind, that may satisfy people on the amendment. It is going to change it a little bit to see if it in fact satisfies the concerns of some of the members. Can I try that?

The Acting Chairman: This is an amendment in place of the previous amendment.

Mr. Reville: We did not ever really get the words out.

It would be something like this:

"Whereas the public accounts committee feels so strongly that it must not be interfered with in the conduct of its business, it recommends to the committee to which the matter is referred that the engagement of legal counsel to assist Mr. Gillies in defending himself against legal action in respect of this matter be strongly considered."

In fact, this committee is recommending to the committee to which the matter be sent that because of the seriousness of this situation, in our view, legal counsel be strongly considered in respect of Mr. Gillies's defence. That leaves it up to the Legislative Assembly committee probably to receive the view of this committee as to the seriousness with which we take this matter.

There is no objection to this one, I think.

The Acting Chairman: I suggest to you, Mr. Reville, that you save that subsequent motion and let us vote on the rest of the motion.

Mr. Mancini: He withdraws his first amendment and he replaces it with a new one.

The Acting Chairman: I am suggesting that it be a subsequent amendment and that we deal with the first part of the motion, which is less controversial.

Ms. Fish: An agreement on the whole of the main part of the motion and Mr. Reville's wording in place of the earlier wording Mr. Wildman had offered.

Mr. Mancini: Let us read the motion again, Mr. Chairman.

Mr. Callahan: As I understand the situation, even in that vain, I do not know whether that establishes--I do not know what the precedent is. I do not know what the rules are. Maybe someone who has been here longer than I have does know. Mr. Gillies is not the only person being sued under that claim; there are about four other people, as I recall. Is that recommendation to hold true for them?

There are too many unanswered questions. I would prefer to have that matter looked at and if there is a precedent for it, I certainly would support it. To do that now, we are adding something which at least I, as a member, do not know is appropriate or within our power or whether it has ever been done before.

I would like to get on, as Ms. Fish would, with the issue that is before us. We can do that very simply by passing Mr. Wildman's initial motion and leaving the other one for consideration. Nothing is going to happen to Mr. Gillies between now and let us say the end of this sitting, which has got another hour to go. Maybe in the meantime we can send out and find out if there is such precedent. If there is, I am prepared to vote for it. I would have some difficulty voting for it right now.

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The Acting Chairman: This place is full of precedents, and precedents are being set in--

Mr. Callahan: That is what a precedent is. If you set it here, you then set the precedent for the future. I am sure there is at least the instance of parliamentary policy or precedent in Ottawa as to what took place when Mr. Ouellet was served with a similar type of action; I think it was a libel action as well. Maybe we could get on with the other one, and let us ask our questions of the people who are before us; if Mr. Reville wants to send that out, maybe we can get an answer before we adjourn.

Mr. Epp: I would very much like to proceed with the motions. I would suggest that, however, since it is a three-part motion, and I have no difficulty--as I understand it, it is a three-part motion--

Mr. Wildman: No. It is two parts.

Mr. Epp: You have eliminated what?

Mr. Wildman: We said we were willing to withdraw the initial amendment and replace it with this one.

Mr. Epp: You are still reporting it to the House?

Mr. Wildman: Yes.

Mr. Epp: You are still--

Mr. Wildman: --reporting it to the House and requesting it be referred to the Legislative Assembly committee--

Mr. Epp: Okay. That is two, and the third one is the legal aspect.

Mr. Wildman: --and that that committee consider the hiring of legal counsel.

Mr. Epp: So it is a three-part motion, and I will support all three parts, but I am suggesting that they should be taken in the order in which they were given. If the third part is taken first--in fact, that is okay if the third part amended is different from the first part--but they are three separate parts, and they should be taken in the order in which they are given, and then proceed.

The Acting Chairman: Under a procedural course, we cannot take the first part first; you have to take the amendment first.

Mr. Wildman: It is not--Mr. Chairman, that is what I am saying.

Interjection: The first will be last, and the last will be first.

Mr. Wildman: The last part is not amending any part of the first part; it is just three different things.

The Acting Chairman: It is amendment by addition to the motion. It is an amendment; it was not part of the original motion.

Mr. Wildman: It is not changing the intent of the motion, Herb; it is an amendment, an addition to the motion.

Mr. Epp: It is an addition to the motion--the amendment is.

The Acting Chairman: First, Mr. Wildman, then Mr. Sterling next, and maybe we can proceed.

Mr. Wildman: I think we are prolonging this, and I do not think that is necessary. I would just like to say one thing in response to Mr. Callahan. I think he has a legitimate concern about whether or not we are setting a precedent. Because of the new wording proposed by my colleague--

The Acting Chairman: Which we will hear in a moment.

Mr. Wildman: --I do not think that it can be considered a precedent. All we are asking in this motion is that another committee consider something. They may in fact reject that proposal. We are not saying that they do it; we are just saying that they consider it. In that sense, we are not setting any precedent, other than the precedent of asking them to consider something. I do not think that is a serious precedent.

Mr. Sterling: I am not sure this committee has the mandate to pass a motion to hire legal counsel for a member of the committee. The Legislative Assembly committee does have that power, however. The Legislative Assembly committee has to know how this committee feels about the matter, and that is what the motion of Mr. Reville does: it lets them know. Perhaps for clarification we could have the clerk read what the total amended motion says, so it is clear to everybody what the motion says. If Mr. Reville withdraws all previous motions and makes that his final motion, then we will not have to worry about what is amending what.

The Acting Chairman: If that is the desire of the meeting, let us hear the full motion including the amendment.

Clerk of the Committee: Mr. Wildman moved that "the standing committee on public accounts report the incident of the attempted serving of Mr. Gillies, a member of the committee, with a writ during the proceedings of the committee this morning and request reference of the matter to the Legislative Assembly committee for investigation and report to the House as soon as possible."

Mr. Reville moved that the motion be amended by adding: "Whereas the public accounts committee feels so strongly that it cannot be interfered with in the conduct of its business, the public accounts committee recommends strongly to the committee to which the matter is referred that it consider the engagement of legal counsel to assist Mr. Gillies in defending himself against legal action arising from this matter."

The Acting Chairman: That is the motion and the amendment. Are you prepared to vote now on the amendment?

Mr. Wildman: Call the question on the amendment.

Mr. Sterling: Mr. Reville, I do not think they follow very well or read very well together.

Mr. Wildman: Do you want to do them separately?

Mr. Sterling: I think they should just be separate motions.

Mr. Wildman: Okay.

Mr. Reville: I do not mind that. If you want me to withdraw the amendment, I will then move that as an original motion following the vote on Mr. Wildman's if that will solve the procedural difficulties.

The Acting Chairman: I suggested that about 20 minutes ago.

Mr. Reville: Well, you were right 20 minutes ago and you are right now.

The Acting Chairman: Okay. That is withdrawn. The amendment is not part of the motion; it is only the first part that--

Mr. Wildman: Mr. Chairman, I would call the question on my motion.

The Acting Chairman: On the motion. All those in favour of Mr. Wildman's motion so signify. That is carried unanimously.

Motion agreed to.

Mr. Reville: Mr. Chairman, I would like to move a motion--

The Acting Chairman: Which we have already heard.

Mr. Reville: --which we have heard, and call the question thereon.

The Acting Chairman: Those in favour of Mr. Reville's motion so indicate. Let it be noted that Mr. Gillies is not voting on this motion. There are six in favour. Those opposed to this motion? Two.

Motion agreed to.

Mr. Reville: That is a good morning's work. Why do we not adjourn?

The Acting Chairman: Does the committee wish to continue asking questions that are perhaps not involved in the concern of this particular writ that has just--

Ms. Fish: Oh, no. Just a minute.

Mr. Reville: I think it would be better just to say does the committee wish to continue?

Ms. Fish: Just a minute.

The Acting Chairman: All right. I shall say, does the committee wish to continue its work?

Ms. Fish: I would like to say that I as a member of this committee would like to continue the committee's work and I believe the committee should.

Mr. Wildman: Exactly, and that is my recommendation as well.

The Acting Chairman: The committee shall continue unless I hear any objections to the contrary.

When you were interrupted, Mr. Pitura, do you recall exactly what you were saying?

Mr. Pitura: My first concern was that I was out of order. I could not figure out why I was out of order. My mind was completely blank. I was going to ask for some help too, legally, to get me out of that pickle.

The Acting Chairman: You did not cause a problem.

Mr. Pitura: All I was going to do, and I really was not going to take any more time of the committee otherwise, was to try to wrap up in a very brief summary.

First, convert-to-rent does make better use of existing resources. Second, it is not a social housing but a market housing initiative. It is an incentive program to produce rental units. More importantly, it helps in this order: respective tenants, the local communities, the municipal councils with respect to assessment, and it helps the owners to gain some additional revenue.

I just want to leave that with the committee as sort of a summary towards the convert-to-rent program. Thank you very much.

Mr. Cornell: I would just like to add, considering the events of this morning, we appreciate the fact that you are continuing because we have a very good program and we are happy to answer any and all questions about it.

Ms. Fish: I will begin my line of questioning if I may by referring to research material prepared by legislative research and files for members of this committee. My first question would be whether a copy of that material has been made available to the witnesses before us?

The Acting Chairman: I do not know. Have you seen the package that was prepared by legislative research?

Ms. Fish: I would like to take a moment, if we have an additional copy, to put it towards the witnesses.

I am going to ask you to begin by turning to the summary page of the material that is being handed out to you right now. On that page--there it is, right there, the first page that you come to--two thirds of the way down, I would like to read a series of statements in this and to ask you to tell us whether those statements are accurate and true to the best of your knowledge.

"The Ministry of Housing has thus allocated funds for 10,400 units since the program was first started." Is that correct?

Ms. Corke: The funds are available but we have committed only about 5,939, I believe.

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Ms. Fish: You have allocated funds for 10,400 units. The great majority of loans--

Ms. Corke: I am sorry, excuse me. We have committed funds for 5,936, but the funds are available to take us to 10,400 over the next two to three years, I believe.

Ms. Fish: I ask you for the third time: Are the funds allocated, not committed, for 10,400? Are they allocated?

Mr. Pitura: No. We have been given approval for those funds for roughly \$70 million. We have only flowed to date about \$41 million, so there are still additional units to be committed and additional funds to be cash flowed, for new projects that may--

Ms. Fish: That is correct; that was not my question. My question was whether you had allocated funds. Now, would \$70 million be the approximate funding level for 10,400 units?

Mr. Pitura: Yes.

Ms. Fish: So, I think that the answer is yes, you have allocated funds, but you have not committed and you have not flowed. You have not committed to individual programs and you have not flowed; you have allocated money.

The next statement that I would ask you to confirm, if it is true, is, "The great majority of loans made under this program have been for amounts of less than \$100,000." Is that correct?

Ms. Corke: I believe it to be. I would like to check that.

Ms. Fish: I will take that as an interim reply, and you will check that and give the information to us at committee.

The third statement is, "As of December 31, 1986, only three of the approximately 760 loans that had been either committed or made were for amounts of more than \$1 million: Brad-Lea Meadows Ltd., Chatham, Bob Martin Construction, Kingston, and Huang and Danczkay Ltd., Toronto." The amount was \$3,514,000 to that last-named project.

Ms. Corke: That is also something I can check and get back to you quite quickly.

Ms. Fish: Thank you very much. Do you believe that to be a correct statement?

Ms. Corke: Yes, I do believe it to be.

Mr. Pitura: Yes.

Ms. Fish: Thank you. I wonder if we could then turn a few pages forward to the copy of the flyer I have here issued by the ministry on the convert-to-rent program. Would you tell me under which eligibility criteria the Huang and Danczkay project in Toronto was approved?

Mr. Pitura: First, let me explain the purpose of this outline. It does not necessarily contain all the material that is required to administer the program, because then it does not become an outline, it becomes a textbook. What you have here is a summary of the major requirements of the program.

As far as the conversion aspects that relate to the subject property in question, how it was approved, the fourth paragraph starts, "Generally, projects that involve the conversion of nonresidential properties into housing...." That is one aspect, very general, all-encompassing, on conversion. The first bullet point under "Check the following" implies that, but not specifically. Those are the two areas.

Ms. Corke: If I might add to that, it has been clear to us over the history of the program that certain types of convert-to-rent projects are much more popular and much more easy to understand. Generally speaking, we have used these outlines as illustrations. There are seven pages worth of guidelines which actually define the eligibility criteria more specifically.

There are several other kinds of conversions not specifically gone into in this outline that are possible to do under convert-to-rent. It is just a question of economy and directing it to the most likely target groups.

Ms. Fish: This is information made available to the public, if someone is interested in ministry information on a convert-to-rent program?

Ms. Corke: It is not widely distributed unless asked for, but it is available.

Ms. Fish: If someone asks the ministry for information on the convert-to-rent program, would this be made available to them?

Mr. Pitura: Yes.

Ms. Fish: Under "Eligible Properties," does this say, "Check the following to see if your concept may qualify for interest-free loans that help create new rental apartments"?

Ms. Corke: Do the guidelines say that?

Ms. Fish: Does this public information the ministry provides to those interested in the convert-to-rent program suggest that as a course of action to the reader?

Ms. Corke: Implicitly, yes.

Ms. Fish: I think it is a bit more than implicit, Ms. Corke. I have just read exactly from the brochure made available to the public.

Ms. Corke: Yes, I am sorry.

Ms. Fish: Through this public information, the ministry is clearly directing members of the public interested to "Check the following to see if your concept may qualify for interest-free loans." Under which of those points that the reader is invited to check to see if a project qualifies did the Huang and Danczkay project qualify?

Mr. Pitura: We get many inquiries from the public, generally, who have not read the outline or seen any newspaper advertisements, but who have properties. They want to know, as a general inquiry, if there are any programs administered by the Ministry of Housing they may be eligible for. That is another source of inquiry we get.

Ms. Fish: The fact is that the Huang and Danczkay project could not possibly be construed to come in under any of the "check the following" categories that have been indicated to the public by the ministry. The only one that was even vaguely pointed to in reply to the question was one that says as follows: "Converting nonresidential property into rental housing: empty school or office, warehouse, factory, space over retail store." On the face of it, none of those was the case with the Huang and Danczkay project. It was not an issue of converting nonresidential property into rental property as

in an empty school or office, a warehouse, factory or space over a retail store.

In the light of that, I am very concerned to understand whether you are saying that an applicant who did not fall under any of these categories and who was still trying to get money would clearly have to go and talk further with the ministry. Other applicants who read this and felt they did not fall under it would not know they might be funded if they did not go and speak further with the ministry.

Mr. Callahan: Could I ask a supplementary?

The Acting Chairman: Let us get an answer to the question first.

Mr. Cornell: Sue, you go first.

Ms. Corke: Potential applicants are encouraged to call the ministry--our phone numbers are on the back of the outline--if they have any questions or if they think they may be eligible in those broad categories. Those are just intended to be examples of the kinds of things in the generic category of converting nonresidential property into rental housing.

I deal with a great many inquiries from the public all the time. Basically, they do not even see the outlines. They say things like: "I have this project I would like to do. Is there any government program that will cover it?" Many of our inquiries are that broad.

Mr. Callahan: Could I be permitted a supplementary on that?

Ms. Fish: Yes, go ahead.

Mr. Callahan: I think what Ms. Fish is getting at in the Huang and Danczkay case is that the buildings were demolished and the project went ahead on those lands and it does not appear to be in this circular you are talking about. Are there any other projects similar to that?

Ms. Corke: Yes, there is a fairly long list of them.

Mr. Callahan: Is that in the material you have given us? Is that in the brief?

Ms. Corke: Yes, there are 10 or 11 other projects that have occurred in Waterloo, Thunder Bay, Prescott, Kingston, London and Hamilton.

Mr. Callahan: Were those instances where the existing structure was demolished and they started from scratch?

Ms. Corke: Yes, that is true. In fact, there are some fairly dramatic examples. There was the demolition of a small machine shop in Bourget which is just outside of Ottawa. That produced eight rental units for senior citizens. This has been occurring since the rules were revised in June 1984. Demolition has been a legitimate activity on a nonresidential property.

Mr. Callahan: Under what circumstances would demolition be the route to go?

Ms. Corke: Normally, demolition would be the route to go if it simply was not practical or feasible to convert the existing property. For

instance, a machine shop would not provide you with very much in the way of rental units, but it is a nonresidential property and demolition will provide you with eight rental units. It is economic feasibility.

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Mr. Callahan: Just so I am clear on it, can you indicate the ones that occurred or were approved similar to the concept that you can demolish the buildings and build on that land under this program?

Ms. Corke: Yes. In Thunder Bay there was the demolition of a service station.

Mr. Callahan: You appear to be reading from something. Is it possible that might be made available to the committee?

Ms. Corke: Yes, certainly it could be.

Mr. Callahan: Is it in the brief?

Ms. Corke: No, I do not believe it is in briefing book, but we can certainly make it available.

Mr. Reville: Perhaps that list could be made available, Mr. Chairman.

The Acting Chairman: Will you accept that, Mr. Callahan?

Mr. Callahan: I am content with that. Perhaps you can just read off--

Ms. Corke: Yes, I will.

Mr. Callahan: You said a machine shop. Was there anything a little more dramatic than a machine shop?

Ms. Corke: We have a warehouse that was demolished in Kingston which actually resulted in 216 units. We had an institution for the mentally retarded that was out of use which resulted in 34 units. It was demolished--

Mr. Reville: Where was that?

Ms. Corke: Casselman. We have a retail store in Thunder Bay that was demolished which provided six units, I mentioned the service station in Thunder Bay, and there was a car wash in Prescott that was demolished and resulted in 16 units.

Mr. Callahan: I can see why they did that. It would be difficult to convert a car wash into--

Ms. Corke: Quite often these--

Mr. Reville: The nice thing about a car wash is that when you live in it, you get all that good plumbing.

Mr. Callahan: You would get lots of hot water, that is for sure.

Let us go back to the warehouse because that seems to be a big one. How many units did that create?

Ms. Corke: There were 216 in Kingston.

Mr. Callahan: Which warehouse was that?

Ms. Corke: It was at Montreal and Elliot streets.

Mr. Callahan: What was the value of that?

Ms. Corke: I do not have that information, but I could find it for you quite easily.

Ms. Fish: How long before construction began was the building demolished?

Ms. Corke: The rules specify that it is supposed to be demolished after the approvals process and under convert-to-rent.

Mr. Reville: That was a \$1.5 million loan. I know that.

Mr. Gillies: I am just trying to be helpful. Is this the loan to Bob Martin Construction in Kingston of \$1,512,000,000?

Mr. Cornell: Yes.

The Acting Chairman: All right, back to Ms. Fish.

Ms. Fish: Thank you very much. Do I infer from the answer to my last question just now that the demolition would, in the normal course, be done as part of the development, a construction activity after the approval by your program and, therefore, would be paid for by the developer of that development?

Ms. Corke: I would like to defer that question, if I may.

Mr. Cornell: Mr. Bissinger is from our office in the northern part of the city that dealt with some of these. He handles the program on a day-to-day basis.

Ms. Corke: There is a fine line between the operations side of the program and the design part of the program. We handle the operational side.

Ms. Fish: I trust you are not drawing a distinction between the requirements and the practice.

Ms. Corke: No, I am not. I am talking about operational measures.

Mr. Bissinger: In answer to your question, our concern is to evaluate the eligibility of the project to make sure it was not previously in residential use. If we are sure that the proposal was a nonresidential site and that it qualified under the eligibility criteria, that satisfies us.

Ms. Fish: I am a little bit troubled here, because I seem to be getting contrary advice. Am I being told that when there is demolition involved, the requirement is that demolition be part of the construction process, or am I being told that the site might have been able to have been cleared years before and have been essentially sitting?

Mr. Bissinger: Our eligibility criteria state that the site could not have been in residential use before.

Ms. Fish: It is an amazement to me that I can ask a direct question

on the timing of demolition with construction and get answers on eligibility which, parenthetically, Mr. Chairman, continue not to point to the public information on eligibility.

I will try the question again. Can you either confirm specifically or correct Ms. Corke's statement of a matter of a few minutes ago that the normal program requirement is that demolition occur as part of the construction process?

Mr. Bissinger: Yes. That is the normal process.

Ms. Fish: Thank you. Can you tell me which of the three projects that have been funded in excess of \$1 million, at least one of which has been referenced under questioning from my colleague the member for Brampton (Mr. Callahan), namely, the Kingston project, had demolition as part of the construction process and which, if any, did not?

Ms. Corke: I can find out for you and get back to you.

Ms. Fish: That would be fine. Can you tell me whether the Huang and Danczkay project, to the best of your knowledge, had demolition as part of construction or whether demolition was some years prior to construction?

Mr. Bissinger: On the Huang and Danczkay proposal it was both. Some demolition of the silos had occurred several years before that; however, after the application was received and we did an inspection--I myself inspected the site--there was at least one office building that was still in use on the site.

Ms. Fish: Can you tell me who paid for the demolition and initial clearing of that site?

Mr. Bissinger: I am not aware of who paid the bill.

Ms. Fish: Can you tell me whether you funded any demolition or clearing of the site under the loan approval, whether it was contemplated as part of the loan approval?

Mr. Cornell: To the best of our knowledge, no. I am not there on the day-to-day front line. Ed, can you--

Mr. Bissinger: Demolition is part of the recognized cost of conversion.

Ms. Fish: Does that include any demolition that occurred prior to an application being made?

Mr. Bissinger: I presume if it were a cost incurred by the applicant, it would be a recognized cost, yes.

Ms. Fish: You are coming back with details on the demolition questions and the other project as to the timing?

Ms. Corke: Yes.

Ms. Fish: Can you tell me whether you met with Ivan Fleischmann at any time to discuss the Huang and Danczkay project?

Mr. Bissinger: There were several very brief telephone conversations

with Mr. Fleischmann. They amounted to no more than: "How is the application proceeding? Do you have all the information you require?"

Mr. Wildman: You never happened to--

Ms. Fish: Sorry, but has the witness finished his reply?

Mr. Bissinger: I also met on one occasion with Mr. Fleischmann but again there was no discussion of any length or duration on this proposal.

Ms. Fish: Can I just be clear whether the proposal was mentioned in the course of that meeting?

Mr. Bissinger: It might have been, but the conversation would not have amounted to anything I would recollect right now.

Mr. Wildman: I have a short supplementary. This may sound somewhat facetious, but did you happen to have lunch with Mr. Fleischmann? Whether or not you had lunch, was there discussion at your meeting about Mr. Fleischmann's political involvements?

Mr. Bissinger: No, Mr. Wildman, to both questions. I have never had lunch with Mr. Fleischmann. There were no more than three or four very brief telephone conversations and one meeting in our office at which we discussed housing programs.

Mr. Wildman: But not partisan politics?

Mr. Bissinger: No, none whatsoever.

Ms. Fish: Can you tell me how you came to know Mr. Fleischmann?

Mr. Bissinger: How I came to know him?

Ms. Fish: Yes.

Mr. Bissinger: He called me.

Ms. Fish: And introduced himself to you?

Mr. Bissinger: Yes.

Ms. Fish: Can you share with us what he said in his introduction, how he introduced himself?

Mr. Wildman: The word "hack" springs to mind.

Mr. Epp: He probably said his name.

Mr. Bissinger: I think he might have said something to the effect of: "I am Ivan Fleischmann. I represent so-and-so."

Ms. Fish: So-and-so?

Mr. Bissinger: All right. "I represent Messrs. Huang and Danczkay and I am just wondering how things are progressing with that project. Do you have all the information you require?" At that particular time, just after they had submitted their application, I said: "Yes, the application is quite

detailed. We are satisfied with what we have as far as the preliminary documents are concerned." He said, "Fine, if you need anything else, just let us know," and that was it.

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Ms. Fish: So his introduction to you was to indicate that he was speaking for, acting for, representing, Huang and Danczkay, and inquiring on the project. Did you know Mr. Fleischmann personally or by name from any other source?

Mr. Bissinger: No, prior to that I did not know Mr. Fleischmann and I had not heard of him.

Mr. Reville: I have a number of general and specific questions which might help us understand better what is going on here. First of all, in terms of your part C, which is the interesting table of convert-to-rent activity as at December 31, 1986--and I am going to refer the witnesses to specific entries here so that we can understand what is happening--in my quick review, I might tell the members of the committee, it does appear to be correct that there are only three projects that have loans in excess of \$1 million. I will come back to that. There are a number of projects, however, that are in excess of \$500,000--

Interjection: Is that a vote?

Mr. Reville:--and I guess there is a vote on private members' bills just now.

Ms. Fish: I wonder if I could ask one brief question before we adjourn, Mr. Bissinger. You are quoted, sir, in the Globe and Mail of October 28, 1986, and I will give you a copy of it in a moment. The section in the article says, "Asked whether he was aware of Mr. Fleischmann's ties to Liberals, Mr. Bissinger would say only, 'We read the newspapers.'" There is a copy of the article. I wonder if you might wish to consider the answer you gave me moments ago in this committee.

Mr. Bissinger: I read that; there were two of us on the speakerphones and I did not make that comment. So I was misquoted.

Mr. Wildman: You do not read the newspapers?

Mr. Reville: Who did, Mr. Bissinger?

Ms. Fish: The other person on the telephone, Mr. Bissinger?

Mr. Hill: My name is Byron Hill and I was involved in that conversation. I made that statement.

Mr. Reville: I doubt if there is anybody who does not read the newspapers.

The Acting Chairman: The committee must recess now to go to the House for a vote.

Mr. Epp: We have people who can read the newspapers, and Mr. Fleischmann's name was very prominent last fall. Anybody who had not heard of Mr. Fleischmann last fall obviously was not following the news.

The Acting Chairman: We will come back after the vote to continue the discussion about 12:30 p.m. or so. It is up to the committee; do you want to come back? Order. We are now recessing; we will come back here after the vote and sit until 12:30 p.m.

Mr. Callahan: Could that document, just the one that I asked about, be filed? If it could be done before we come back, everybody will have one.

The committee recessed at 12:03 p.m.

1218

The Acting Chairman: We will reconvene the meeting. I think when we left, Mr. Reville was--

Mr. Reville: I was in flight.

The Acting Chairman: --beginning with a line of questioning.

Mr. Reville: I was.

I draw to the attention of the deputy minister, or whoever wants to be involved in this, the document under tab C, which is convert-to-rent activity. I will give you an example. On page 34 of the brief, under the Barrie listings, Bubel Management Ltd., 80 units, 148 Dunlop Street East. No money is listed beside that line. What does that mean?

Mr. Bissinger: That means an application has been received, it is under review and no decision has been made on it, so no conditional approval or final approval has been made.

Mr. Callahan: Which one are you on?

Mr. Reville: I am on page 34 of part C, which is a computer printout of convert-to-rent activity. It is a sort of status report, a snapshot of what is happening in convert-to-rent, I assume, and you will see the second entry does not have an amount beside it. We are now advised that means an application has been received but no decision has been made.

As you look through this, you will discover there are a number of fairly large projects in that category, and if funds were committed, it would change somewhat the proportion of small to large projects. Is that fair to say or is that impossible to say?

Ms. Corke: It is fair to say, but not by a great deal.

Mr. Reville: Leaving aside the convert-to-rent activity for a moment, are there cumulative totals in this? Yes, there are.

Ms. Corke: Right at the end.

Mr. Reville: If I can get people to turn to page 69, units under review are 2,195--indicate if I understand this properly--and units committed are 5,936.

Mr. Callahan: Point five.

Mr. Reville: That obviously will provide lots of amusement for us, but I hope not too much.

Mr. Callahan: It sounds like 2.5 kids.

Mr. Reville: Let us go back again. On page 29 we get a notion of the scope of the program as approved and on page 30 we get almost 6,000 units where commitments have been made and allocations will happen when the project gets to the various stages. There is 15 per cent and 50 per cent completion. That money goes.

Ms. Corke: If the conditions of the commitment are met.

Mr. Reville: Exactly. Then there is an additional 2,195 units represented by active applications, and you are out beating the bushes to get approximately 20,200 and some--

Ms. Corke: Over the next three years.

Mr. Reville: Oh, you have three years to do this.

Ms. Corke: No, I do not think we are beating the bushes. December 16, 1985, was a four-year program. The extra 6,000 units--

Mr. Reville: Wait a minute. I want you to back up for a second. Should I turn back to page 29 to follow you along?

Ms. Corke: Yes.

Mr. Reville: The three-year commitment goes until when?

Ms. Corke: Actually, it was four years from December 1985, so it goes to December 1989.

Mr. Reville: December 1985 to December 1989. How many units were added at that point?

Ms. Corke: Six thousand were added on to a base of 4,400, which had already been allocated to program.

Mr. Reville: Okay, this is something I am glad we are getting to because one of the things you observe about announcements of units is that you very rapidly get confused about what that really means. For instance, the minister talks about 16,000 units frequently. I am talking about numbers we hear in the news and the press releases all the time and the current number is 16,000 units plus 3,000 units projected.

This is described as the effort of the Ministry of Housing. On the 4,000 of those 16,000 the minister talks about as convert-to-rent units, can I get some acknowledgement that those units can be committed up until December 1989, or does nobody here know?

Mr. Pitura: No. The proportion of 16,000 units the minister makes reference to--the 4,000 units--relates to convert-to-rent. It does not say that in that 16,000 we have also used up the 2,000 units that are still available for commitment under the convert-to-rent program.

Mr. Reville: We have a little trick around here. We talk about old money and we talk about new money. I know I have heard that trick before.

Let me quote to you what the minister said in the Legislature as

recently as Monday: "There are 16,000 rental units being committed during the current fiscal year. This total includes 6,700 nonprofits," which we will leave aside, "5,000 modest rental units through the Renterprise program," which we will leave aside, "and 4,000 new rental units through convert-to-rent."

If you doubt my words, I am happy to pass this statement along. I heard the minister say this and I checked against delivery and he said it.

On page 30, part B of your document--from the way you compute your figures, I cannot determine to what announcement the 2,182.5 units as of December 31, 1986, belong. Are those units in the current fiscal year? I guess they cannot really be part of previous units.

Mr. Callahan: It is as of December 31, 1986.

Mr. Reville: I can read that. I am trying to get the question answered. There are different accounting systems used by you and the minister, and I want to try to find out--

Mr. Pitura: We try to state here that as of the end of the calendar year there are 2,200 units committed. We are confident that between January 1 and prior to the end of the fiscal year, March 31, 1987--as you can already see, we have 2,195 units under review--the commitment of 4,000 units under CTR will be made in the fiscal year 1986-87.

Mr. Reville: That means you anticipate great activity in the two months that remain in fiscal year 1986-87. You expect your department will be able to commit almost as many units in that period as it did in the 10 months previously.

Mr. Pitura: It is actually three months, January, February and March.

Mr. Reville: That is three months versus nine months. That worries me a great deal because if, as I think this inquiry will show, the commitment of funds to Huang and Danczkay may not have made a whole lot of sense. You may be under such pressure of number increasing that the 2,000 extra units you need to have committed may cause us to be back here again in a few months. You may not want to comment on that.

Mr. Callahan: Perhaps you can clarify that. I do not understand that statement, Mr. Reville. What are you saying?

Mr. Reville: In order to meet targets announced by the minister, the ministry is going to have to do as much work in three months as it was able to do in nine months, which makes one worry about how anybody could possibly do that. Most people think nine months' work takes nine months and you cannot do it in three months.

Mr. Epp: But there often is a lot of preparatory work done in a certain period of time that--

Mr. Reville: If I had wanted to ask Mr. Epp the question, I suppose I would have asked him.

Mr. Callahan: May I ask a supplementary, Mr. Reville, just so I can understand what you are saying?

The Acting Chairman: Before the supplementary, it is just about

12:30. Do you want to continue the questioning? Do you want to continue the meeting now or come back one week from today?

Mr. Callahan: May I ask the supplementary so that I do not forget it?

The Acting Chairman: Go ahead. It will be a quick supplementary.

Mr. Callahan: The 2,195 that you show as units under review are really spillover as well from pre-December. Is that not right?

Mr. Reville: You better not be right.

Mr. Callahan: I am asking the question. Are they a spillover or are they items that were put in place since the end of December?

Mr. Cornell: We are looking at two things: first, those that are committed and how we can do that much work in three months. Unfortunately, some of the field people are not here, but many of these are very close to commitment now, so it may be just a simple matter.

Second, I would make the point that we would not in any way break the rules just to meet some kind of a numbers target. If we did not meet the numbers target, we would freely admit it.

Mr. Reville: I want to ask a question so that the next time we may be able to get this information.

What I would like the ministry officials to do for us is to relate their own on-line accounting to the political announcements. For instance, we have heard that the 4,000 convert-to-rent units are part of the minister's package of housing programs for the fiscal year. I would like to see how your program, which perforce has to be over several years, ties into that. Which of the committed units and the under-review units properly belong to the 4,000 and which belong to the previous 6,400 that we knew about in the past?

Mr. Cornell: I do not think that is a problem.

Mr. Reville: I do not think that is a problem, but it is not information that has been captured in the material we now have. Once we have that information, we might be able to assess the likelihood of the total commitment being made within some reasonable time this fiscal year and whether or not the projects in the commitment are as good as you think they are. Simple enough.

The Acting Chairman: We will adjourn until next Thursday morning.

Mr. Cornell: What surprise will you have in store for us that day?

The committee adjourned at 12:31 p.m.

CAJON
XL21
-P73

STANDING COMMITTEE ON PUBLIC ACCOUNTS

RENTAL HOUSING LOAN

THURSDAY, JANUARY 29, 1987



STANDING COMMITTEE ON PUBLIC ACCOUNTS

CHAIRMAN: Runciman, R. W. (Leeds PC)

VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)

Barlow, W. W. (Cambridge PC)

Callahan, R. V. (Brampton L)

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Epp, H. A. (Waterloo North L)

Mancini, R. (Essex South L)

Philip, E. T. (Etobicoke NDP)

Pope, A. W. (Cochrane South PC)

Smith, D. W. (Lambton L)

Wildman, B. (Algoma NDP)

Substitutions:

Fish, S. A. (St. George PC) for Mr. Barlow

Reville, D. (Riverdale NDP) for Mr. Wildman

Clerk: Arnott, D.

Staff:

Malcolmson, P., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Housing:

Cornell, W., Deputy Minister

Pitura, L. F., Assistant Deputy Minister, Social Housing

Bissinger, E. J., Manager, Housing Programs

Corke, S., Manager, Housing Conservation Unit

Hodgson, D., Director, Ontario Buildings Branch

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON PUBLIC ACCOUNTS

Thursday, January 29, 1987

The committee met at 10:09 a.m. in room 151.

RENTAL HOUSING LOAN
(continued)

Mr. Chairman: We will come to order.

Mr. Philip: I have a procedural motion. I move that, in the light of the controversy concerning the views expressed by Abe Schwartz, he be invited to appear before this committee as soon as possible to provide any information he may have concerning any differences between him and the government.

Mr. Chairman: I take it that is a notice of motion?

Mr. Philip: No, it is a procedural motion on scheduling, and as part of the motion, I am suggesting he be scheduled immediately after the inquiry we are presently undertaking into the convert-to-rent program.

Mr. Epp: What he is doing is, in fact, a notice of motion. As you know, the notice of motion has to be given at a previous meeting to be dealt with.

Mr. Chairman: Unless there is unanimous consent.

Mr. Epp: Unless there is unanimous consent; I agree. I am not prepared to give that consent.

Mr. Philip: Procedural motions do not require it.

Mr. Epp: If Mr. Philip wants to give his motion, then he has an opportunity to provide it to us next week.

Mr. Gillies: We are certainly prepared to give unanimous consent to hear and deal with the motion now, but in the absence of such unanimous consent, we will deal with it next week.

Mr. Epp: I want to make it clear I am not necessarily opposed to bringing Mr. Schwartz in. I am sure he is going to be coming in some time anyway.

Mr. Chairman: I appreciate that, Mr. Epp. I do not want to prolong this.

Mr. Epp: We cannot have somebody rushing in late to a meeting and saying, "Look, folks, I want to do this on my terms and that is it." We have certain precedents here to follow.

Mr. Chairman: We are going to take it as notice. Mr. Pope, do you have something you want to bring to the floor before we deal with the witnesses?

Mr. Pope: I would like to ask the chairman, on behalf of this committee, to issue a request that certain individuals and companies appear before the committee on the matter before us, the convert-to-rent program; and that at the time of their appearance, they produce all documents, journals, correspondence and things they have in their possession and lists of things they had but no longer have in their possession with respect to this particular project. I would like that list to include Ivan Fleischmann, Canadian Intercorp, Alderman Dale Martin, Mayor Arthur Eggleton, the employees of the planning department of the city of Toronto, Wilf Caplan and Damaza Consultants Ltd.

Mr. Chairman: It is a request. Do you have any comments on the request?

Mr. Philip: That happened to be the list I had. Great minds think alike. This whole thing is a scandalous waste of the taxpayers' money. There have been violations of laws and buildings have been commenced without building permits. The whole thing is so obscene and so absurd that we need to have some insight as to what certain people at the municipal level did or did not do and who the players were in that particular forum. I am particularly anxious to hear the role of certain people.

Mr. Epp: Can I have a reiteration of who that is? I have Mr. Fleischmann, Intercorp, the Toronto planning department, Wilfred Caplan and Dale Martin. Did I miss anyone?

Mr. Pope: Their companies, and I presume as well Huang and Danczkay and the principals of that company and, while I think of it, the building inspector for the city of Toronto and the city solicitor.

Mr. Gillies: The chief building inspector's name is Michael Nixon.

Mr. Epp: Not the entire planning department, I hope.

Mr. Callahan: How about the Blue Jays ball team as well?

Mr. Chairman: Let us have some order.

Mr. Epp: Surely to goodness, we cannot have the entire planning department. Ms. Fish can help us on this, but I am sure there must be 100 people in that planning department. We are allocating a few days to this. To bring all of them in as witnesses would mean that we are going to bring in 100 people and have them all in here for an average of 15 minutes to half an hour. Are you trying to make a job for yourself?

Mr. Gillies: The person we would want before the committee is whoever was responsible for overseeing this project at the Metro planning department.

Mr. Epp: Of course.

Ms. Fish: I do not think it is Metro planning we want; it is the city of Toronto planning staff. I suggest that we ask the commissioner of planning and the area planner responsible. My reading of council reports suggests that would be Miss Susan Richardson.

Mr. Philip: That is right.

Mr. Callahan: Could I get a little direction? I am always mystified when I come into this meeting as to what we are doing. I would really like to narrow the issues. I thought when we came in here, the direction the third party and the opposition were taking was that this project we are discussing was unusual because it was not done in any other case and was not provided in the handout that was furnished initially by the Ministry of Housing.

We have now quite obviously all agreed that that supposition on the part of the third party and the official opposition is wrong. Now we are digging into, I gather from these witnesses--

Mr. Gillies: That is your assumption. That is not what I was thinking.

Mr. Callahan: You have right before you, from research, a number of projects where the demolition took place.

We now seem to be going on another fishing expedition, presumably back into the question of what did or did not take place at the municipal level. I would like to have some idea, the next time I attend, of where else we will be going.

Mr. Chairman: We are going to prolong this and get into another one of our infamous hassles. I just want to suggest Mr. Pope has made a proposal in terms of additional witnesses and information to be made available to this committee. If there is agreement, that is fine, we will proceed. If there is not agreement, I think we are going to have to do it in the form of a notice of motion and handle it in that manner. I am not going to allow this to go on much longer.

Mr. Epp: I notice all these, and I want to associate myself with my colleague's remarks. For someone to say, "Look, if we want to hear from all these people," without any indication of why we want to hear from them, I do not think that is being fair to the other members of the committee.

For instance, unless Mr. Martin, as one example, can shed a lot of light on the fact that he was part of the lobbying effort or nonlobbying effort or something of that nature, I do not see any significance in having someone because he happens to be an alderman in the city of Toronto and opposed to a particular project unless he is involved in that predicament. Anybody can go out there and make a comment publicly on an aspect of a proposal. Do we therefore necessarily call him or her as a witness, without first ascertaining whether he has anything really important to say before this committee? Otherwise, we are wasting our time and taxpayers' money.

Mr. Chairman: I will allow Mr. Philip and then Mr. Gillies or Mr. Pope. I will let them make the decision. It is obvious where we are going on this, and I think we will have to require a notice of motion.

Mr. Epp: I know the agreement has been made beforehand as to whom they are going to call, but--

Mr. Pope: No, there was no agreement.

Mr. Philip: The issues, I think, are fairly clear. We have a preposterous situation, in which it will cost the taxpayers of Ontario, by the most conservative estimates I can come up with, more than \$24 million to provide 125 rent-geared-to-income units for 15 years, at which time the

government ceases to have any ownership, equity or influence over those units. It will cost \$24 million to provide certain people, 125 lucky families, with gold-plated accommodation while there are 25,000 families on the waiting list for geared-to-income housing.

The issue at a municipal level is, how is it that a company can be so arrogant as to order illegal construction without the appropriate permits? How is it that a provincial government can give the wink and allow that to happen and not exercise its powers under statute? How is it that certain people at the city of Toronto can seem to be encouraging this kind of illegal activity when the average home owner gets the ass kicked off him if he so much as builds an extension to his garage without an appropriate building permit?

Mr. Chairman: I bring you to order.

Mr. Philip: Those are some of the questions that have to be asked, and I think the mayor, Mr. Fleischmann and, indeed, the deputy minister had better be here to answer those questions.

Mr. Gillies: I want to associate myself with what Mr. Philip has just said. I think it will be very evident by the end of this meeting, if we get going, why we want these various people before the committee. I would move a procedural motion that the list of witnesses as proposed by my colleagues and by Mr. Philip, which I believe the clerk has noted, be requested to appear. As a procedural motion, I suggest we could vote on that at any time.

1020

Mr. Chairman: The clerk advises me that he makes no distinction. I am relying on his expert advice and I am going to accept it as notice of motion. We can deal with it if we have unanimous consent. Do we have unanimous consent to deal with that motion?

Interjection: Agreed.

Mr. D. W. Smith: No.

Mr. Callahan: We have not even gotten through the first witness yet and you are ordering up more.

Mr. Chairman: Order, please. We have the witnesses before us: Mr. Cornell, Mr. Pitura and Ms. Corke.

Mr. Gillies: On a point of order just before we get into this matter, Mr. Chairman: I would like to request a brief in camera meeting at the conclusion of this hearing, not regarding this issue at all but regarding another matter before the committee that has been brought to my attention. I do not think we will need more than about five minutes.

Mr. Chairman: All right; fine.

Mr. Epp: I just want to take a minute to dissociate myself as a member of the Legislature from the remarks the member for Etobicoke (Mr. Philip) made. It is very unparliamentary and I think he owes an apology to the people of Metropolitan Toronto and to the people of Ontario. I, for one, do not appreciate it and I know my colleagues do not appreciate it.

Mr. Chairman: Fine. It is on the record now. Let us get to our witnesses.

When we adjourned last week, Mr. Reville was questioning the witnesses, and I will give him the opportunity to continue at this point. Mr. Reville, are you prepared to continue?

Mr. Reville: I am prepared and I will apologize to anyone at the outset to get that out of the way.

When we last met, we regrettably had to adjourn. I was referring to some useful documents provided by the ministry--that is not them--which were the status reports. I know where it is now.

Part C is the convert-to-rent activity as of December 31, 1986. As I recall, I had just finished getting some explanation about why it was that beside some entries there were no amounts committed. I think you explained to me that there were applications received on those projects, but a decision had not been made; but that, if a decision were made to go ahead on the projects, then the numbers would add up to the 2,000-odd units that I think are under review--2,195, to be exact.

The next line of questioning had to do with the fact that while many of the projects approved are very small and the dollar amounts are correspondingly small, several projects, including the Huang and Danczkay project, do involve large numbers of units, the Huang and Danczkay project being the largest.

It struck me that approximately a little under 900 units--878 units in total--are accounted for by the Chatham project, the Kingston project and the Huang and Danczkay project, which would be roughly 40 per cent of the units allocated in the recent round. I wonder whether there is some kind of impulse in the ministry to get the largest number of units allocated as quickly as possible; if that is part of the explanation of why these three big projects were approved.

Mr. Cornell: No, that is not the inclination. That is not the modus operandi. On the particular ones, Mr. Pitura, do you want to speak to those directly?

Mr. Pitura: I can try to answer the question. Certainly, as we said the other day, this is an incentive program that has been very successful and popular. I would be remiss if I did not think the staff in the field was not always trying to market this program and encourage prospective people to get involved with the production of rental units. Having said that, we have not issued any ultimatum or any direction to staff to do anything extraordinary or to change the rules or whatever to reach whatever target we set. This is echoing what the deputy has said: it is business as normal, with no unusual rules being applied to meet whatever target is set.

Mr. Reville: The statement you made on January 22 to start us off included a description of the goals behind the redesign of the convert-to-rent program.

Mr. Cornell: On what page?

Mr. Reville: For instance, on page 3 you state, "We wanted to come up with a truly innovative idea that would be a source of rental housing." As

we heard the description of some of the projects undertaken, there was no question that a number of the projects sounded quite innovative to me. I think I heard mention, for instance, of a machine shop being replaced by eight housing units on the site, a car wash in Thunder Bay and a warehouse in Kingston. To bring the discussion down to the Huang and Danczkay project, can you tell me in what aspects your ministry officials decided that building rental housing on that site was truly innovative?

Mr. Cornell: Certainly. I think the best way to approach that is to have Ed Bissinger, who was in the field when the contact was made, take you right through the process.

Mr. Bissinger: When we received the Huang and Danczkay application and reviewed it, we did not review it with the intent of doing something innovative. That was not in our minds at all. When we received the application, the first thing we did was determine whether the proposal was eligible under the program guidelines, which is what we do in each case when we receive an application. We discussed it extensively and did determine clearly that it qualified under the June 19, 1984, revised eligibility guidelines.

Mr. Reville: May I stop you there for a second? I am sure some members of the committee may have some questions about that specific point. I am not going to address the point about whether it fitted within the guidelines. I want to ask you an opinion kind of question. When you were reviewing the proposal for this project, was any part of your thought process occupied with wondering whether this project was likely to happen in the absence of government funding?

Mr. Bissinger: We were aware of the difficulties the project was experiencing at the municipal level. We were aware that there were problems with its not conforming to the official plan, that the city required the proposal to have a fairly substantial assisted housing component, that there were problems with density and that there was every possibility the project might not go ahead at the municipal level if the province did not participate.

Mr. Reville: It was your view that without provincial participation nothing would have happened on that site?

Mr. Bissinger: It was possible or probable, somewhere in there.

1030

Mr. Reville: With your knowledge of the market, would you say there is a strong demand for expensive accommodation in Harbourfront?

Mr. Bissinger: We did not view this as expensive accommodation.

Mr. Reville: I am not suggesting this particular project is expensive or is not expensive. Is it your view that there is a market on the Harbourfront lands for high-priced accommodation, regardless of the tenure?

Mr. Bissinger: Since there is only a 0.1 per cent vacancy rate in the rental market and there is a great need for additional rental accommodation, as I said, we did not view it as expensive accommodation. We did our technical review and we determined that it was moderate.

Mr. Reville: I am sorry. You are missing my question. I am trying to

move away from the details of the rent structure of the Huang and Danczkay project into a hypothetical market opinion from your point of view. There are a fairly large number of units in the Harbourfront area that everybody would agree are expensive units.

For instance, on the top of the terminal building, you can buy a condominium for what the advertisement says is slightly less than a million dollars. There is also a fairly large array of other condominium projects there that strike me as not having been hard to sell. In fact, some people were annoyed that the offer never seemed to become public in some cases; that they were all gone before they had a turn.

Mr. Chairman: Ms. Fish would like to jump in here.

Mr. Reville: Ms. Fish, please jump in.

Ms. Fish: To be certain that I understood the argument about the desirability of the project and how it fitted with the eligibility guidelines, can you confirm that you are saying this project did not come under the ineligible list? I am looking at your research file, "still ineligible under convert-to-rent are the following," blah blah.

Mr. Cornell: Is your question regarding this thing that was just handed out? Are you asking whether this particular project falls under the heading "still ineligible"?

Ms. Fish: I am asking you to confirm that, from your perspective, this project remains eligible and has in no way been covered by any of the listings under "still ineligible."

Mr. Cornell: It is eligible.

Ms. Fish: Do you consider that the project meets one or more of the eligibility criteria listed in the preceding paragraphs and pages?

Mr. Cornell: That is correct.

Ms. Fish: Put me down to ask questions.

Mr. Reville: Would you agree that the Harbourfront lands are considered very desirable for residential construction?

Mr. Bissinger: I do not disagree. Yes, I agree.

Mr. Reville: Earlier, you suggested that if the Huang and Danczkay project were unable to meet the targets of the city of Toronto in respect of assisted housing, the project would not be approved by the city. At what stage was Huang and Danczkay in its application for approval from the city when it applied for convert-to-rent assistance?

Mr. Bissinger: It was applying for higher density. There was an application in to receive higher density and to gain an exemption from the requirement for a 30 per cent assisted housing component from the city.

Mr. Reville: Are you aware of any other developers who have managed to avoid the requirement of providing the assisted housing required by the official plan of the city of Toronto?

Mr. Bissinger: No, I am not. Perhaps I could clarify that point.

Our main concern with respect to municipal approval when we review these proposals is that the project receive municipal support. We do not involve ourselves in any difficulties that the project may encounter at the municipal level. What we look for are assurances that it has the support and, ultimately, that it receives a building permit. I would say that in most cases what transpires prior to the proponent receiving a building permit does not really concern us. If they do not get the building permit and they do not have municipal approval, then we do not proceed any further.

Mr. Reville: Maybe I have not understood. I thought earlier you said you were aware that it seemed unlikely at the time that the Huang and Danczkay project would get approval unless there was, in some way or another, the provision of assisted units.

Mr. Bissinger: That is correct.

Mr. Reville: To that extent, you take account of what the municipal zoning or official plan requirements are.

Mr. Bissinger: Yes, that is right. In this particular case there was a lot of publicity. There were full-page articles in the papers. We were aware of the difficulties the project was encountering. We were also in contact with the municipal planning staff. We knew what the situation was because of its high visibility.

Mr. Reville: Were you also aware, at least in respect of some of the planning reports in connection with the project, that the convert-to-rent subsidy would not create what the city thought were assisted housing units?

Mr. Bissinger: I am sorry; could you repeat that question?

Mr. Reville: The city has a view of what assisted housing is and what it is not. I believe there was a planning document that suggested that notwithstanding the convert-to-rent subsidy, the units would not be considered in the view of the chief planner of the city as assisted units. Had that report been received early enough in this process?

Mr. Bissinger: I cannot say whether or not we received that report. We understood that the city's interpretation of assisted housing meant that the units must be public housing. I believe that was the city's interpretation of assisted housing, but that was changed later on.

Mr. Reville: You say that is your understanding. I do not think that is what the city's view of assisted housing is. In any event, that was what you thought the city thought, in so far as the city thinks.

Mr. Bissinger: Yes.

Mr. Reville: I do not have any further questions just now.

Mr. Pope: I have a couple of basic things. Could you indicate to us your filing system in the Ministry of Housing?

Mr. Cornell: Could we indicate to you what it is?

Mr. Pope: Yes. Do you have a central filing system? Do you have a regional filing system? Do you have duplicate files?

Mr. Cornell: Are you talking about these particular projects again?
Mr. Bissinger, do you want to answer?

Mr. Bissinger: We have six regional offices in the community housing division. Each regional office operates independently in terms of keeping its records and receiving and processing applications. Our files are retained in the regional office.

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Mr. Pope: Do you have a separate file yourself at central office for the ministry?

Mr. Bissinger: Yes. We are the central regional office, we are one of six, and we have a file for this project. There is no file for this project in head office.

Mr. Pope: Can you table with this committee the contents of your file from your regional office and confirm there is no information or file on this project in the main office?

Mr. Bissinger: I can confirm to you there is no file on this project in head office, yes.

Mr. Pope: Can you table your file on this project from the central regional office?

Mr. Bissinger: If it is the request of the committee..

Ms. Fish: I did not hear the answer. Was that a "yes"?

Mr. Cornell: Yes. If you want it, you can have it.

Mr. Pitura: I do not want the members of the committee to go away thinking there are not parts of the file elsewhere. For example, I have some information here to help me in the proceedings of this investigation, so I have my own little holding file. I can assure you I do not know everything that is in the regional file. I have some elements of the regional file with me this morning; I just want to say that in case there is something at head office I have not had. That is what I have with me here today.

Mr. Pope: I thought so. I was going to expand it a bit and ask whether you can file any documents that anyone in the head office of the ministry may have with respect to this matter, including any briefing notes.

Mr. Cornell: No problem.

Mr. Bissinger: Excuse me. Is it the briefing notes and the head office documents you are interested in or the entire file?

Mr. Pope: The entire thing. Who has access to your files in regional office? Is there a controlled-access system, or can anyone access any file, regardless of who is working on it?

Mr. Bissinger: I suppose anyone in the regional office could have access to those files, yes.

Mr. Pope: Is there any monitoring of who gets access to the files or puts information in or takes information out? Is there any access control?

Mr. Bissinger: No, there is not.

Mr. Pope: Are you aware of the existence of a file in the minister's office about this project?

Mr. Cornell: No, other than the same kind of file I might have, in which I get copies of letters that go by me that have come in to other people in the ministry.

Mr. Pope: Have you discussed what documents the minister has in his possession prior to coming here?

Mr. Cornell: No.

Mr. Pope: Mr. Chairman, may I ask that you transmit to the minister a request for all the documents he has in his possession in his files about this matter?

Do you keep telephone logs of who calls with respect to certain files?

Mr. Bissinger: No.

Mr. Pope: Do you keep slips of telephone messages and unreturned calls in the files themselves?

Mr. Bissinger: No, we do not.

Mr. Pope: Does anyone under your control receive verbal information from phone calls or meetings that you are aware of that would not be contained in the files?

Mr. Cornell: From my point no, I do not know anyone.

Mr. Mancini: What are you trying to get at?

Mr. Pope: I want to know what the information is. Is that the same for all of you?

Mr. Bissinger: Yes.

Mr. Pitura: Yes.

Mr. Pope: As far as you are aware, all contacts and communication are contained in a written form and in the files?

Mr. Bissinger: Not all contacts or telephone calls, no. We do not record all that. There would be correspondence. There may be notes to file. If something irregular or noteworthy happened, the project co-ordinator assigned to it may write notes to file or reminders. There may be notes in margins of letters and so on.

Mr. Callahan: Only lawyers do that, so they can charge for it.

Mr. Pope: To tell you the truth, the telephone logs in another inquiry were rather revealing, which is why I want to get at this. Who is the project co-ordinator who would receive calls on this matter?

Mr. Bissinger: One of my staff members, Kevin McCann. He worked on the most detailed parts of the proposal. I supervised the co-ordination of the proposal.

Mr. Pope: Will you ask Mr. McCann questions similar to those I asked you to see if he has anything in his possession?

Mr. Bissinger: Yes, I will.

Mr. Pope: Do you keep records of appointments and meetings in daily logs?

Mr. Bissinger: Yes, I keep that.

Mr. Pope: Can you produce that log for us?

Mr. Bissinger: Yes, I can.

Mr. Cornell: Do you mean for everything we do, every day, all day?

Mr. Pope: Yes. Is that part of your regular--

Ms. Corke: A detailed diary?

Mr. Cornell: Yes, I have a diary. I do not always put in the next day the things that came up the day before that I did not know were coming up.

Mr. Pope: Can you review your diaries with respect to the Huang and Danczkay matter and give us information of dates of any contacts or meetings?

Mr. Cornell: You mean if we had a staff meeting on this subject?

Mr. Pope: Yes, or any contact from the minister's office or from anyone else.

Mr. Cornell: Okay.

Mr. Pope: I do not want to see--

Mr. Bissinger: Yes, that we have.

Mr. Pope: Okay. Did you receive calls from the minister's office with respect to this project? If so, who in the minister's office and when?

Mr. Bissinger: No, I did not.

Mr. Pope: You never heard from the minister on this project?

Mr. Bissinger: No; I never heard from the minister or his deputy.

Mr. Pope: A \$24-million project and you never heard?

Mr. Cornell: I think I should speak to that. You can correct me on this, but I do not know where the \$24 million Mr. Philip mentioned comes from.

Mr. Philip: I will be happy to walk you through that. I can do that as a supplementary.

Mr. Chairman: You are on the list; you will have an opportunity.

Mr. Pope: You are saying that no one in the minister's office ever called with respect to this project?

Mr. Bissinger: Yes.

Mr. Pope: Is that the answer everyone is giving?

Mr. Cornell: Yes.

Mr. Pitura: I believe that at one time I was advised we might get a call about a project or someone interested in a convert-to-rent project at Harbourfront about a year ago or so. I cannot say when or where, but I remember that somewhere in the back of my mind. A lot of us get tens, hundreds of calls on all sorts of things. Someone might be interested in meeting with somebody about something. It is part of our job to meet with people.

Mr. Pope: You answered me in the context of the minister's office. Was there someone from the minister's office who called about this?

Mr. Pitura: I believe it was a staff member.

Mr. Pope: Do you remember the name?

Mr. Pitura: I believe it was the executive assistant, but I am not sure. It was one of those general calls.

Mr. Pope: Did you get calls from any other minister or the Office of the Premier about this project?

Mr. Bissinger: I have not.

Mr. Pope: Anyone else?

Ms. Corke: No.

Mr. Pitura: No.

Mr. Pope: Can you check the same questions with Mr. McCann?

Mr. Bissinger: Yes, I can.

Mr. Pope: Did you ever hear from Ivan Fleishmann, Canadian Intercorp., Wilf Caplan or Damaza Consultants with respect to this project?

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Mr. Cornell: No, I have not.

Mr. Bissinger: Yes, I spoke to Mr. Fleischmann on the telephone a number of times. As I said at the last meeting here, they were very brief telephone conversations. He asked if we had all the information we required and that, if there was any further information that we needed with respect to processing the proposal, we let him know. That was the extent of it.

Mr. Pope: Was Mr. Fleischmann calling on behalf of Canadian Intercorp? Did he distinguish what entity he was calling for, or was it just Mr. Fleischmann? Was that all you knew?

Mr. Bissinger: I did not make a distinction between them.

Mr. Pope: How about Mr. Caplan?

Mr. Bissinger: No, I never heard from Mr. Caplan.

Mr. Pope: Same for you?

Mr. Pitura: Never from Mr. Caplan. I received one or two calls from Mr. Fleischmann and referred him to our regional office.

Mr. Pope: Did you receive any calls from the municipal level with respect to this project, let us say first of all, from the planning department of the city of Toronto or the building inspector, and second, from any aldermen or the mayor's office?

Mr. Bissinger: No, I did not receive any calls, although on a number of occasions we called the planner at city hall just to find out how things were proceeding.

Mr. Pope: And that was it, just the planner?

Mr. Bissinger: That was it; that is right. Only the planner.

Mr. Pope: No other calls?

Mr. Bissinger: No other calls.

Mr. Pope: Was it the same for you?

Mr. Pitura: I made no calls to the city planning office.

Mr. Cornell: The same is true for myself.

Mr. Pope: How about the aldermen or the mayor's office?

Mr. Bissinger: I had no calls from the aldermen. I received a letter from the mayor expressing his support for the proposal.

Mr. Pope: Is that one of the documents you are going to table with the committee?

Mr. Bissinger: Yes.

Mr. Pope: Okay.

Mr. Philip: What was the date of that letter?

Mr. Bissinger: I can look it up for you. It may take a minute or so; excuse me. I am sorry, it may take a few minutes. I have a lot of documents here.

Mr. Chairman: Perhaps we could continue with the questioning.

Mr. Philip: I would like to have an answer to that question, so I will wait.

Mr. Pope: Were any calls made on behalf of the mayor by any of the staff?

Mr. Bissinger: No, there were not. If there were, I do not recall any.

The date of the letter was January 15, 1986.

Mr. Philip: January 15, 1986, stating that the mayor was in support of it?

Mr. Bissinger: Yes.

Mr. Philip: That was before a building permit was issued, was it not?

Mr. Bissinger: Yes, it was.

Mr. Philip: How could the mayor approve of a project when there was in fact no building permit and it was not an approved project? Did that occur to you?

Mr. Cornell: I suppose you would have to ask the mayor.

Mr. Gillies: Could I ask a very brief supplementary?

Mr. Chairman: Okay. We will have Mr. Gillies's quick supplementary and then go back to Mr. Pope.

Mr. Gillies: As a supplementary, I just wondered if the witnesses could confirm that January 15, 1986, is also the date of application for the convert-to-rent loan.

Ms. Fish: Are you talking about the Huang and Danczkay application?

Mr. Gillies: Yes. Was that the date, January 15, 1986?

Mr. Bissinger: I can look that up for you. We met with the proponents on January 10 first, and we advised them as to the application procedures involved and the type of information we required.

At the same time, we told them we wanted to see some evidence of municipal support for the proposal. I can only assume it was at that point that they obtained the letter of support in principle. It was not an approval from the mayor, obviously. It was just an expression of support that he thought it was a good proposal.

Mr. Gillies: My question simply was whether you could confirm the fact that the written application for the provincial program was dated January 15.

Mr. Bissinger: It was January 13.

Mr. Gillies: January 13?

Mr. Bissinger: Yes.

Mr. Pope: Who was at the January 10 meeting?

Mr. Bissinger: I was, and my manager, Byron Hill.

Mr. Pope: Who else?

Mr. Bissinger: Mr. Huang and Mr. Danczkay.

Mr. Pope: Anyone else?

Mr. Bissinger: I do not believe so; just the four of us.

Mr. Pope: Do you have any land title documents with respect to this property--searches?

Mr. Bissinger: No, we do not have any on file.

Mr. Pope: Did you retain any solicitor in order to understand the nature of this property and the obviously interim financing arrangements that had to be made and the security for that? Did you retain any solicitor to do that work?

Mr. Bissinger: Our senior solicitor was involved, in great detail.

Mr. Pope: What is his name?

Mr. Bissinger: Bert Le Mesurier.

Mr. Pope: Is it possible to get copies of his documents and files?

Mr. Cornell: I think they would probably be in the file, would they not?

Interjection: They might be; they might not be. They might have a separate system.

Mr. Pope: Those are my general questions.

Mr. Chairman: Right on time, Mr. Pope.

Mr. Philip: I wonder if we can go over the document called Convert to Rent, Revised Eligibility and Procedural Changes. On that document, would you agree that the major criterion on which this project became eligible was the demolition of an existing nonresidential building to enable new construction on a nonresidential site? Is that the criterion that makes it available?

Mr. Bissinger: Yes, that is correct.

Mr. Philip: Can you tell us what that building was?

Mr. Bissinger: That was demolished?

Mr. Philip: Yes.

Mr. Bissinger: There were grain silos on the site, and there was also an office building on the site.

Mr. Philip: Were the grain silos demolished before the application was made or after the application was made?

Mr. Bissinger: They were demolished before.

Mr. Philip: Therefore, at the time of the application, the grain silos were irrelevant, since you had a vacant lot where the grain silos had existed.

Mr. Bissinger: It was not vacant. There was an office building still standing when we inspected the property.

Mr. Pope: Come on.

Ms. Fish: May I have a supplementary? What was the date of the inspection?

Mr. Philip: What was the date of the inspection?

Mr. Callahan: Evidence was given on the last day, as I recall.

Mr. Philip: Sir, is this the office building that was demolished?

Mr. Bissinger: No. I have a photograph here as well. That is the office building I had a meeting in after the application was received.

Mr. Wildman: Two-storey?

Mr. Bissinger: Two and a half, I guess; three-storey.

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Mr. Philip: What is the size of that?

Mr. Bissinger: It could be 8,000 square feet.

Ms. Fish: Is that 8,000 square feet in the building?

Mr. Philip: Is that 8,000 or 800?

Mr. Bissinger: On three stories, on three floors, yes; it could be.

Ms. Fish: Perhaps you will undertake to check the lot size of the building and then inform us of the square footage.

Mr. Epp: Bring us some comparisons, whether that is the smallest building that has ever been destroyed or not.

Mr. Philip: What percentage of the total acreage would any buildings occupy that have been destroyed as a result of this convert-to-rent?

Mr. Bissinger: What percentage of the building that was destroyed--

Mr. Philip: What is the square footage compared to the square footage of the total lot? Can you work that out for us?

Mr. Bissinger: I can, but that really is not relevant once we determine that the project is eligible. The rationale behind that is that the site was not previously in residential use--it had been in industrial use--and we were creating rental units where previously none had existed.

Mr. Philip: Using that criterion, I could put an outhouse on a vacant lot and be eligible under the convert-to-rent program. Is that not true?

Mr. Callahan: Depends on whether it is residential--

Mr. Epp: Depends on whether you have a permit for an outhouse.

Mr. Wildman: It also depends on whether the outhouse was a permanent residence.

Mr. Philip: It does not have to be a permanent residence. As long as it is a building that is not a permanent residence, and your criterion is to demolish it and put up a residence there, then anything qualifies. Conceivably, you could have an outhouse or a telephone booth and convert that and get all of these grants that the guy next door who has a vacant lot without his telephone booth or outhouse on would not be eligible for. Does that make any sense to you?

Mr. Bissinger: There was not an outhouse on the site. There were industrial buildings.

Mr. Philip: Sir, I suggest to you that it was not very much more than that.

Mr. Callahan: They are not grants, either; they have to be repaid at some point.

Mr. Epp: With regard to the regulations and the interpretation of these regulations, has anything changed in the last 20 months with respect to the regulations you are now applying on these projects with respect to the previous term?

Mr. Bissinger: No; there has been no change since June 1984.

Mr. Epp: Since 1984 you have been consistent with the regulations and the application of these regulations?

Mr. Bissinger: That is right.

Mr. Callahan: Mr. Chairman, I think something should be clarified. Mr. Philip uses the word "grants." I grant they were interest free, but they were repayable loans.

Mr. Philip: Interest-free loans cost money.

Mr. Callahan: But they are not grants.

Mr. Philip: If the government gave me an interest-free loan of a few million dollars for 15 years, I would be quite happy. I consider it a grant.

Mr. Callahan: Do not use the word "grant"--

Mr. Chairman: Order, please; come on. Let us get on with this.

Mr. Philip: Was there any other structure that had to be demolished on the site?

Mr. Bissinger: Not at the time that we inspected.

Mr. Philip: The sole criterion, then, by which they became eligible was this office building.

Mr. Bissinger: Office building and the industrial structures that were on previously, yes.

Mr. Philip: Which were all demolished, anyway.

Mr. Cornell: But it was a conversion of industrial to residential use.

Mr. Bissinger: We had ample proof. We have many photographs which verify the fact that it was not previously in residential use, that it had been in industrial use.

Mr. Philip: Would a vacant industrial lot qualify under your program?

Mr. Bissinger: No, it would not.

Mr. Philip: Therefore, the fact that those buildings had been demolished prior to the application is no different from having a vacant industrial lot. The only structure that qualified it was the office building.

Mr. Bissinger: The site had not previously been in residential use. It was an industrial site and we were satisfied that a commercial building still stood on the property when we inspected it, and we treated it no differently from any of the other 15 or 16 proposals we received that involved demolition.

Mr. Wildman: I am rather obtuse. I need to have this explained again. You just said that a vacant industrial lot would not qualify.

Mr. Bissinger: That is correct.

Mr. Wildman: Subsequent to that you said if a lot had not been in residential use before, that was a major criterion.

Mr. Bissinger: If it had a nonresidential structure on it.

Mr. Wildman: Let us say, hypothetically, there is a lot that has a factory on it in 1980. That factory is destroyed or demolished in 1982. It has always been used for manufacturing industrial purposes. They come to you in 1985 and apply for convert-to-rent. Do you look at it as a vacant lot, since this factory no longer exists, or do you look at it as a lot that had a factory on it some time in the past?

Mr. Bissinger: I do not believe we have had such an application.

Mr. Wildman: I think you did and I think we are talking about it right now.

Mr. Epp: He has always said, with due respect, that there was a nonresidential building on there which had approximately 8,000 square feet and was three floors in height.

Mr. Wildman: Okay, but my colleague's question was not directly answered. My colleague's question was that the only thing that qualified this application was the fact that there was a nonresidential office building--

Mr. Philip: A so-called office building.

Mr. Wildman: --existent on the lot. Instead of a "Yes" to that question, the response was "Yes, and there had previously been grain silos that were demolished." That is what I heard. As I say, I am obtuse, so perhaps I did not understand.

Mr. Bissinger: If I might add, the reason for referring to the grain silos was to state that we had been assured that industrial buildings had been there and not residential apartments.

Mr. Wildman: I give up.

Mr. Chairman: Mr. Gillies has a quick supplementary and then back to Mr. Philip.

Mr. Gillies: This may help clear this up a bit. You will agree with me that the grain silos were demolished in 1983.

Mr. Bissinger: Yes, I agree with that.

Mr. Gillies: You will agree that the building that was left on the site during 1986 was a small office building.

Mr. Bissinger: And the foundations of the grain silos. They were still there.

Mr. Gillies: And the foundations of the silos.

My information is, and you are going to confirm it any way, that the building that was demolished last year was not 8,000 square feet. It was 1,000 square feet on the ground floor and 1,000 square feet on the second floor. You can confirm that. This is what I would like to ask you to clarify for me. Reading from your convert-to-rent program criteria, dated March 1986, one of the criteria on page 2 reads as follows:

"Projects on which work has commenced before the convert-to-rent loan is committed will not be eligible." Then it says, "Building or land may be purchased and a building permit obtained."

If demolition was in progress on this site during 1986, before you approved the convert-to-rent loan in November, then under that criteria was this project not ineligible?

Mr. Bissinger: We do permit demolition. Demolition is not construction.

Mr. Gillies: You do permit demolition.

Mr. Bissinger: Yes. Many projects were allowed to--

Mr. Gillies: We will get into this in detail a bit later then, but what about all of the construction which was under way on this site before your approval in November of last year?

Mr. Bissinger: We also allow site clearing, site preparation, the putting up of hoardings and excavations.

Mr. Gillies: The foundation was above the ground prior to November.

Mr. Chairman: Back to Mr. Philip. You have had two questions, Mr. Gillies.

Mr. Philip: I am looking at the scale drawing of the site. You said it was 8,000 square feet.

Mr. Bissinger: I was asked for a quick estimate. I said 8,000.

Mr. Philip: The amount of space that it occupied was 1,000 square feet. How many floors did you say there were?

Mr. Bissinger: Three floors.

Mr. Philip: That would make a maximum of 3,000 square feet, not 8,000 square feet.

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Mr. Bissinger: Mr. Chairman, I was asked for a rough guess. If it is 3,000, I accept. It would not make any difference in whether or not it was eligible.

Mr. Epp: On a point of order, the witness has indicated originally, in response to my question, that it was approximately 8,000. He said he was not committed to that particular amount. The other important point he made was that the size of the building did not have a bearing on the actual decision. The fact there was a building there did not necessarily have to be a particular size, as opposed to the size of the lot. He made that point very clearly.

To hammer home at this point, whether it is 4,000 or 7,000 or 8,000, is immaterial. To try to embarrass the witness in that regard is unfair to the witness.

Mr. Chairman: I do not think that is a point of order either, Mr. Epp. Let us go back to Mr. Philip.

Mr. Philip: I wonder if you can say whether you agree or disagree with this. I am quoting from a letter from the Minister of Housing (Mr. Curling). Mr. Cornell, you may wish to answer this.

Mr. Cornell: I am sorry. Was that from the minister or the deputy?

Mr. Philip: The minister.

Mr. Cornell: Yes.

Mr. Philip: "With respect to specific concerns about provincial convert-to-rent grants for the project, please be advised that the program guidelines require evidence of building permits as a condition of the award."

The date of your letter of intent from the Ministry of Housing was April 23. Would you agree that there was no building permit at that time?

Mr. Bissinger: Yes.

Mr. Philip: Why would you issue a letter of intent prior to a building permit?

Mr. Bissinger: That is our customary review process. It is a conditional approval which tells the applicant his application appears to be in order and that we are satisfied it is eligible, that it qualifies, that we also support the proposal, providing they meet a number of outstanding conditions, such as receipt of a building permit, a copy of a commitment letter from the lender, an offer of the rent supplement units--25 per cent of the building under rent supplement. Provided those conditions are met, we will issue our final loan commitment.

Mr. Philip: Did your letter of intent spell out all of those conditions?

Mr. Bissinger: Yes, it did.

Mr. Philip: Can you supply us with that letter?

Mr. Bissinger: Certainly, yes.

Mr. Philip: As well, the payments of the grant instalments are scheduled at points of significant and substantial completion. Would you tell us the terms of those grants?

Mr. Bissinger: Our payout process?

Mr. Philip: Yes.

Mr. Bissinger: In this case, we will be paying out 50 per cent of the convert-to-rent loans when the building is 50 per cent constructed. That will mean when the the shell is erected for each tower. We will deal with each tower separately. There are two towers; so that means 50 per cent will be paid when the shell is up. Another 45 per cent will be paid on occupancy and the remaining five per cent when the deficiencies have been cleared up.

Mr. Philip: Were these the original terms of the agreement?

Mr. Bissinger: The original terms of the program, you mean?

Mr. Philip: The original terms of your proposal to them?

Mr. Bissinger: No. The normal advancing process is that there is 50 per cent advanced at 15 per cent completion, and the balance at 50 per cent.

Mr. Philip: Why would you have diverted from the normal process with this project?

Mr. Bissinger: One of the ways we process a convert-to-rent loan is that we take the approach of a banker. We are registering a mortgage on title and we want to be sure that our loan is secured. In view of the large amounts of moneys involved here, we wanted to be sure that our second mortgage was secured. We did not want to advance the entire amount of money until the building was erected.

Mr. Philip: Can you give me the date on which Huang and Danczkay would have been informed of the proposal of the 50 per cent completion, of the change from the normal payment procedure?

Mr. Bissinger: I believe that was November 24. They were notified on November 24, 1986.

Mr. Chairman: Mr. Philip, we have another supplementary, if you do not mind.

Mr. Philip: May I just ask this? Then I will be happy to have the supplementary.

Mr. Chairman: All right. Go ahead.

Mr. Philip: If one were suspicious, one might feel that a possible explanation for the sudden change would be so the minister could answer in the House under cross-examination that no moneys had in fact been paid out to this project, could one not?

Mr. Callahan: That is calling for a supposition really.

Mr. Bissinger: Regardless of which payout scheme you used, no moneys would be advanced for some time to come. Also, this funding formula originated entirely in our office. We were not given any direction. It was in consultation with our mortgage corporation staff and regional staff. It was not at any direction from anyone.

Mr. Callahan: Just to go back, you are registering a mortgage on titles, so clearly you are doing an examination of title, and any flowing of money would be conditional, again, upon the title being satisfactory in the normal case?

Mr. Bissinger: Yes.

Mr. Callahan: With the exception of the 10-year, interest-free situation, this is no different really from a building loan, in which a series of inspections is made to determine at what stage the building is to ensure the amount you advanced thus far is secure.

Mr. Bissinger: That is correct.

Mr. Callahan: You have to do that also because of the Mechanics' Lien Act. If you put out too much money without satisfying yourself that you are retaining the proper holdback, you would have a mortgage that might be behind liens. Is that not correct?

Mr. Bissinger: That is correct.

Mr. Callahan: Is that the reason that you do not flow the last amount of money? What is that? Fifteen per cent?

Mr. Bissinger: The last amount is five per cent.

Mr. Callahan: You do not flow that until after the period of lien possibilities has gone and you have satisfied yourself?

Mr. Bissinger: No, not under the convert-to-rent program. Under our own nonprofit program we do exactly what you have just described, but in this case, it is normally 15 per cent at 50 per cent completion and the balance at 50 per cent. What you have described is not applicable under the convert-to-rent program.

Mr. Callahan: But you would have--

Mr. Chairman: Back to Mr. Philip. Mr. Callahan, you will have an opportunity later.

Mr. Philip: I want to get back to that later. I want to direct all my questions now concerning the program and this project to the deputy minister. Perhaps you might get a sharp pencil, because you are going to need one for this.

Mr. Callahan: I have a pen. Will that do?

Mr. Philip: A calculator might be even better.

Do you agree the convert-to-rent program's main aim is to produce moderate-cost market rental apartments?

Mr. Cornell: Yes.

Mr. Philip: It is the minister's statement, so you agree with it.

There are 502 units in the proposed project, the largest project you have undertaken. It is roughly three times the next largest, if my memory serves me correctly. Do you know what the average rent per month will be in that project?

Mr. Cornell: I believe the staff would work that out. Some would be at the higher end and some would be in the middle. I do not have exact information on that.

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Mr. Philip: Do you agree that \$712.75 per month is the average?

Mr. Bissinger: Yes. That is for a one-bedroom apartment.

Mr. Mancini: Can I have a supplementary?

Mr. Philip: I want to walk him through these figures if I may. Then I will be happy to let you have a supplementary, if you need it.

Would the average two-bedroom apartment be \$812 a month?

Mr. Cornell: I believe that is it, but I cannot recall exactly.

Mr. Bissinger: That is close enough.

Mr. Philip: Some three-bedroom apartments were rented for over \$1,100 a month?

Mr. Cornell: Yes.

Mr. Philip: Would you agree this is much higher than Metropolitan Toronto's average two-bedroom apartment?

Mr. Cornell: Metropolitan Toronto.

Mr. Bissinger: No. I disagree with that.

Mr. Philip: What is the average Metropolitan Toronto figure?

Mr. Bissinger: We looked at five or six comparable, newly constructed buildings in the city of Toronto because it would not be fair to go beyond the city of Toronto for the area of search.

Mr. Philip: I thought the list for Metro Toronto Housing Authority was Metropolitan Toronto; I did not think it was the city of Toronto housing authority.

Mr. Bissinger: The Metro Toronto Housing Authority really does not get involved in any rental comparison. We compared the proposed rent schedule with other newly constructed rental buildings on the market. We found that the one-bedroom units ranged from \$556 to \$758. The average of \$710 you had may be a bit on the high side, but I accept that.

Mr. Philip: As of October 1985, the average in Metropolitan Toronto was \$505 a month.

Mr. Bissinger: We looked at current rental rates in newly constructed buildings.

Mr. Philip: That is a very nice selective criterion then. Everyone would love to live in a luxury condominium in downtown Toronto, but if you are on a waiting list for geared-to-income housing, it may occur to you that you are not going to get to live in an apartment on the waterfront.

Mr. Epp: On a point of order, Mr. Chairman: I think it is fair that the witness is trying to compare apples with apples and oranges with oranges. Yet Mr. Philip is trying to compare apples with oranges and tomatoes with rabbits and everything else. I think we see one criterion.

Mr. Chairman: I appreciate your efforts to assist the witnesses, but I think they are quite capable of handling that on their own.

Mr. Epp: I am not trying to assist the witnesses.

Mr. Chairman: I want to advise Mr. Philip that I am going to give him another two minutes. I have allowed some additional time because of the supplementaries.

Mr. Philip: Will you allow me five minutes? There have been a lot of interruptions.

Mr. Chairman: I have taken that into account. I am going to allow you two minutes. If you want to extend it, we are going to require unanimous consent. That is the policy of this committee. You have two minutes.

Mr. Philip: The fact is that the Huang and Danczkay project will definitely be beyond the reach of either low-income or modest-income tenants unless they are subsidized by a rent-geared-to-income program. The convert-to-rent program stipulates that 25 per cent of the units would be offered. Would you agree that is 125 apartments?

Mr. Cornell: Approximately.

Mr. Philip: The average rent paid by the rent-geared-to-income tenants as of December 1986, according to your own figures, was \$228.16 per month. Would you agree with that figure?

Mr. Cornell: I assume that is correct.

Mr. Philip: With the average rents of the apartment building being \$712.75, you are subsidizing. The subsidy for one year on 125 units will come to \$726,870. Would you agree then that the cost over 15 years works out to over \$10 million; in fact, it is just a shade less than \$11 million?

Mr. Cornell: Yes.

Mr. Philip: If one were very conservative and added an interest rate, since it is an interest-free loan, of nine per cent to the \$3,515,000 loan, one would get another \$9,288,352. What you have then is the appalling situation in which you are going to spend over \$20 million to house 125 people, give 125 people a golden apartment for more than \$20 million, and at the end of 15 years you do not even have any equity in that apartment. As a matter of fact, based on the nine per cent, what you have is an average cost per unit of \$161,531 with nothing to show for it after 15 years. Do you think that is responsible use of the taxpayers' money?

Mr. Chairman: After your response, we will go to Mr. Callahan.

Mr. Cornell: Yes, I think it is responsible when you get into the rent-geared-to-income concept, where you are paying differentials. There are a lot of philosophical things that come into it. First of all is the concept that we are not recreating the old-fashioned kind of ghettos where every unit is filled with low-income people. There is a socioeconomic mix within this, and that has proven to be expensive. You are quite right; it is more expensive.

Second, I do not seem to share your cynicism that somebody from a low-income family should not live in a nice place if it is there; if it happens to be by the water and overlooking the park.

Mr. Philip: I guess my cynicism is that, with 25,000 people on the waiting list, giving Cadillac-style apartments to 125 families may not be the best use of the taxpayers' money. I believe the 25,000 people on the waiting list would agree with me.

Mr. Cornell: We are constantly getting requests to try to build in downtown Toronto, where there is a tremendous need. As much as we would like to create inexpensive housing in downtown Toronto, it is a little more difficult than in downtown Uxbridge.

Mr. Chairman: In the spirit of fair-mindedness, I am going to give Ms. Fish a quick supplementary.

Ms. Fish: This is very brief. You mentioned that in comparing the rental structure for buildings, you had examined five or six other newly reconstructed rental buildings in the city of Toronto. I wonder if you could tell us which buildings, and if you do not have that information today, will you undertake to table it?

Mr. Bissinger: I have it right here.

Ms. Fish: Will you tell us which buildings?

Mr. Bissinger: They are 701 King Street West, 80 Front Street--

Ms. Fish: West? East?

Mr. Bissinger: It does not say. It is the Market Square building.

Interjection: That is east.

Ms. Fish: It is the Market Square building?

Mr. Bissinger: Yes. Also, 77 Maitland Street, 250 Queen's Quay West and a building at Bay and Edward Street.

Ms. Fish: Which building is that?

Mr. Bissinger: The Horizon.

Ms. Fish: Can you tell me who did the analysis?

Mr. Cornell: I am sorry, I missed the question.

Mr. Bissinger: Our appraisal staff.

Mr. Chairman: On to Mr. Callahan.

Mr. Callahan: First of all, when did this whole program start? Was it initiated by the present administration or the previous administration?

Mr. Cornell: In 1983.

Mr. Bissinger: In August 1983.

Mr. Callahan: The previous administration initiated it.

Mr. Cornell: Yes.

Mr. Callahan: As I understand from your initial comments, at that time it was restricted to Ottawa and Toronto.

Mr. Cornell: Yes.

Mr. Callahan: How did that work out?

Mr. Cornell: Terribly. We did not get many applicants.

Mr. Callahan: Then the program was enlarged for the province itself.

Mr. Cornell: Yes.

Mr. Callahan: Did things pick up in Toronto and Ottawa in terms of people wanting to get into this program?

Mr. Bissinger: No.

Mr. Cornell: No, they did not.

Mr. Callahan: I gather Mr. Philip's suggestion that this happened to be on the waterfront was really--how many projects did you have in Toronto?

Mr. Bissinger: Up to that point, after three years, we had only 80 units absolutely committed in Toronto.

Mr. Callahan: What was the demand, in what part of the city, first, for low-cost housing?

Mr. Bissinger: The demand was great in Toronto for housing.

Mr. Callahan: Were the waiting lists significant?

Mr. Bissinger: Yes, they were.

Mr. Callahan: What about Metro Toronto? Was the demand great and the waiting list significant?

Mr. Bissinger: Yes.

Mr. Philip: Supplementary.

Mr. Callahan: No, just a second.

Mr. Philip: I allowed you supplementaries, did I not?

Mr. Chairman: That is quite an appropriate request, based on what has happened here.

Mr. Philip: Considering the number of interruptions I have received from the member for Brampton, I think I am entitled to a supplementary.

Mr. Callahan: You have occupied the entire morning, Mr. Philip.

Mr. Philip: Would you agree that another private developer or yourselves or a nonprofit corporation or a co-operative could build a unit that would still be in the public domain for less than--

Mr. Callahan: On a point of order, Mr. Chairman: How is that supplementary to the question I asked? That is a hypothetical question. It is not even close to a supplementary.

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Mr. Chairman: Yes. That frequently happens with you as well and I do not intervene. Go ahead, Mr. Philip.

Mr. Callahan: I am talking about it at this point. Mr. Philip has occupied almost three quarters of this committee hearing as well as every other hearing.

Mr. Chairman: I am trying to allow some latitude here. Go ahead, Mr. Philip. Ask your question and then we will go back to Mr. Callahan.

Mr. Philip: If the member for Brampton pays attention and listens very closely, he may understand the supplementary nature of the question. The point the member for Brampton was trying to make was that somehow the program was not being taken advantage of. The thrust of my question is, since the issue is producing affordable housing, could you not have produced a unit for a lot less than the amount per unit I just quoted you that this one was costing and would that unit not have at least remained in the public domain, or in the nonprofit domain, at the end of 15 years?

Mr. Bissinger: We did some comparisons of what other available programs would have cost. We looked at the Renterprise program. The average per unit subsidy there is \$12,600. We also compared the cost of the convert-to-rent program with the nonprofit program. If they had been built under the nonprofit program, 502 units would have cost \$10 million after five years. The subsidies required to produce rental units under the nonprofit program would have been more expensive.

Mr. Philip: You would have had--

Mr. Chairman: Back to Mr. Callahan.

Mr. Callahan: I would like to take you to page 70 of the brief that was supplied to all of us. I would like to go through a few of the figures in there. For instance, there is Alliston. In my recollection, unless Alliston has expanded dramatically, it is a rather small village. I notice the proposed rent for a two-bedroom unit there is \$650.

Mr. Bissinger: Yes.

Mr. Callahan: Let us go on and look at a couple of others. On page 77, in Midland, a two-bedroom apartment is \$525; in Owen Sound--this is on page 79--a two-bedroom apartment is \$600; in Sioux Lookout, a two-bedroom apartment is \$500; in Thorold, a two-bedroom apartment is \$500; and in Thunder Bay--this is at page 83--a two-bedroom apartment is \$600.

I would like to take you specifically to Toronto, on page 84. Under an application by S. Grimson a two-bedroom apartment is \$1,100. An application by M. Coste and W. K. Gagnon has \$1,200 for a two-bedroom apartment.

Mr. Philip: I want to tell you none of this is part of the accord.

Mr. Callahan: M. Davidson has \$1,100 for a two-bedroom apartment. Below that, W. Bowman and J. Chan have \$900 for a two-bedroom apartment. Down below, J. Ambrosia has \$1,100 for a two-bedroom apartment. Over on page 86, P. Godfrey has \$1,250 for a two-bedroom apartment, J. Szczur has \$1,100 for a two-bedroom apartment and so on.

In each of those cases, before you entered into this, did you do a comparison in the particular area in terms of the rentals that were applicable?

Mr. Bissinger: Yes. The applicant is requested to submit a rent survey, which we review.

Mr. Callahan: I do not know whether you can tell us or not, but going back to those particular areas, would you have had the same difficulty in terms of receiving proposals as you did in Toronto?

Mr. Bissinger: Would we have had the same difficulties?

Mr. Callahan: Difficulties in, say, Alliston or Thunder Bay?

Mr. Bissinger: I am sorry; I do not understand.

Mr. Callahan: Did you have a minimal amount of applications made in, let us say, Alliston? How many did you have in Alliston?

Mr. Bissinger: We had more than the list. These are just examples on this list. We had a good response in Alliston, yes.

Mr. Callahan: You had a good response in Alliston, notwithstanding that the \$650 rental was the going rate.

Mr. Bissinger: That is right.

Mr. Callahan: How about in the Thunder Bay area?

Mr. Bissinger: We had a good response in Thunder Bay, yes.

Mr. Callahan: Notwithstanding that the going rate was in the range, as suggested there, of \$560 to \$600 for a two-bedroom unit. In the Toronto area, you have several \$1,000 items there. You had a range of rents when you were dealing with this issue. Has the response in Toronto picked up?

Mr. Bissinger: No, it has not picked up.

Mr. Callahan: All right. I gather that from your standpoint, in order to achieve accommodation for people on the rather large waiting lists in Toronto, it was important to seriously consider those applications that were made.

Mr. Bissinger: Yes, definitely.

Mr. Callahan: Going back to a statement made by Mr. Philip, was this office building that was on the lands of the applicant a building that was used in conjunction with the mill?

Mr. Bissinger: Yes, it was.

Mr. Callahan: So it was part and parcel of the entire operation.

Mr. Bissinger: Yes.

Mr. Callahan: Although the mills had been ripped down, the building was on the same parcel of land?

Mr. Bissinger: That is correct, yes.

Mr. Callahan: It had been in existence for how long?

Mr. Bissinger: Many years. I would not know how long, but the building was probably 40 or 50 years old.

Mr. Callahan: Although you refer to the building as a commercial building, it was in fact occupying industrial land, the same as the mill was?

Mr. Bissinger: Yes, it was.

Mr. Callahan: Was there any investigation done to see whether or not the office building itself could be converted into residential units?

Mr. Philip: You have to be kidding.

Mr. Bissinger: No, there was no investigation done. It was evident it would not have been feasible at all.

Mr. Callahan: The point I am getting to is that I gather the rationale for allowing demolition to take place is this: if you observe that the particular industrial use is not convertible in a reasonable way and a comfortable way, then demolition is allowed.

Mr. Bissinger: That is precisely the rationale.

Mr. Callahan: In fact, in some of your other suggestions or some of the other areas where demolition was allowed, that was the same policy carried throughout there. You have made available to us a number of applications that have been made where demolition took place. This was not a one-shot deal.

Mr. Bissinger: That is correct, yes.

Mr. Callahan: Prior to this application, had there been demolition locations? Had there been locations where demolitions had taken place?

Mr. Bissinger: Yes, about 15 or 16 similar ones, I believe.

Mr. Callahan: What was their range in terms of the size and type?

Mr. Bissinger: There were all sizes; some fairly small and some quite large.

Mr. Callahan: What was the largest one?

Mr. Bissinger: It was a 216-unit one in Kingston.

Mr. Callahan: Is that the knitting mill?

Mr. Bissinger: No, it was a warehouse on the waterfront in Kingston.

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Mr. Callahan: That took place prior to the application here?

Mr. Bissinger: Yes. We gave the commitment in April 1985, so it was under review for probably the six months previous to that.

Mr. Callahan: Recognizing that when you have an industrial use there is going to be some municipal rezoning required, does that deter you from taking the application?

Mr. Bissinger: No, not at all.

Mr. Callahan: Would any money flow prior to that rezoning being obtained?

Mr. Bissinger: No. No money flows until the building is actually 15 per cent completed.

Mr. Callahan: All that would have to be in place beforehand?

Mr. Bissinger: That is correct.

Mr. Callahan: The commitment you indicated was made was conditional upon a number of things, one of those being appropriate zoning?

Mr. Bissinger: Yes.

Mr. Callahan: I think those are the questions I have. Thank you.

Mr. Gillies: If I may, I would like to go through the project with you, with an eye particularly to two of the criteria. I refer again to the convert-to-rent program application package dated March 1986. I have already read one of the criteria into the record. On page 2 it states: "Projects on which work has commenced before the convert-to-rent loan is committed will not be eligible. Building or land may be purchased and a building permit obtained." We have discussed that one briefly.

The other one I refer to is on the same page. It states: "A key concept in the program is municipal involvement. Projects must receive municipal approvals before a final loan commitment will be issued. The degree of municipal support will be taken into account in the review of the application."

Those are the two things I want to zero in on, work done prior to approval and municipal support and co-operation in the project. I would simply like to go through a series of events with you and determine your knowledge of these events as the project was coming along. Can you confirm for me, as we have already discussed, that Huang and Danczkay applied for the convert-to-rent loan on January 13, 1986?

Mr. Bissinger: Yes.

Mr. Gillies: The letter of intent from the Ministry of Housing regarding this application went out on April 23, 1986?

Mr. Bissinger: Yes, that is right.

Mr. Gillies: On June 3, 1986, Huang and Danczkay applied for a building permit for the rental project.

Mr. Bissinger: Yes, that is correct.

Mr. Gillies: On June 6, 1986, the city of Toronto issued an order against the project for illegal construction. In your discussions with the city of Toronto, were you aware of that?

Mr. Bissinger: Yes.

Mr. Gillies: On June 11, 1986, application was made by Huang and Danczkay for a building permit for the caissons. On June 12, 1986, a second order was issued against the project for illegal construction.

Mr. Bissinger: Yes.

Mr. Gillies: Between June 20 and June 23, 1986, an interlocutory injunction was issued against Huang and Danczkay with regard to this project.

Mr. Bissinger: I do not have those last few dates here, but you are probably right.

Mr. Cornell: On or about.

Mr. Gillies: Okay. On June 23, Toronto city council adopted a recommendation from the city's solicitor regarding a settlement and collateral

agreement. It turned out to be a \$1-million letter of credit that had to be posted by Huang and Danczkay to proceed. You were aware of the city's action at that time?

Mr. Bissinger: Yes, we were.

Mr. Gillies: On June 24, 1986, the following day, application was made by Harbourfront to demolish the two-storey office building referred to and a vault attached to it; the address of those buildings being 371 Queen's Quay West.

Mr. Bissinger: Yes.

Mr. Gillies: Were you aware that June 24 was the date of application for that demolition permit? The photograph I will hand you now, which shows that the building had already in large part been demolished at that time, is dated June 18, 1986. I will be pleased to enter this photo as evidence before the committee.

Mr. Philip: May I see that?

Mr. Gillies: Were you aware at the ministry level that they had demolished the building without a demolition permit?

Mr. Bissinger: That does not really concern us. Under the convert-to-rent program, demolition of the structure after we have inspected the building does not jeopardize eligibility.

Mr. Gillies: Okay. On July 2, 1986, a demolition permit was issued for 371 Queen's Quay West, although that photograph will again show that the demolition had already been undertaken. Would you confirm to the committee that on July 24, 1986, the convert-to-rent letter of intent of April 23 was rescinded by the Ministry of Housing? Is that the case, and why was it done at that time?

Mr. Bissinger: Yes, it was rescinded.

Mr. Gillies: For what reason?

Mr. Bissinger: We were aware of the difficulties surrounding the situation and that the city claimed Huang and Danczkay exceeded the construction permission the city had granted originally. Our understanding was that they could build the caissons but not pour concrete, and I believe they commenced pouring concrete.

Mr. Gillies: If I may tie this back again to the eligibility criteria, there was a recognition on July 24 that they had poured concrete and that, in the city's view anyway, the municipal co-operation clause in your program had been breached. In other words, the city at that time complained to you that the aspect of your program that calls for municipal involvement, municipal approvals to be taken and a degree of municipal support--obviously it was not satisfied at that time with the project's conformity to that criterion.

Mr. Bissinger: The rationale for our criterion of not starting construction prior to a commitment is to ensure that we have the opportunity to determine whether a project is eligible and also to make sure that there is no retroactive approval.

Mr. Philip: May I ask a supplementary on that? Was your concern the fact that they did not have the permit or was your concern one of inspecting the foundations? As I understand it, to pour a foundation such as that you must have the inspector onsite examining the foundation at the time. Of course, that would flip in automatically with the application as the next stage after the building permit had been approved. Was your concern one of the foundation being put in without adequate inspection or of the technicality that no building permit had been obtained in the first place?

Mr. Bissinger: It was more the technicality.

Mr. Philip: It did not occur to you that perhaps you were investing a lot of money in a building whose foundations were not adequately inspected.

Mr. Bissinger: It is a municipal responsibility to do the inspection. We do not do our inspection to ensure that the building is properly constructed. We do our inspection to ensure that the amount of work in place is at a level when we advance the loan under our program.

Mr. Philip: Surely it is your responsibility if you are making an investment--

Mr. Chairman: Let us go back to Mr. Gillies, please.

Mr. Cornell: May I interject, Mr. Chairman?

Mr. Chairman: Yes.

Mr. Cornell: Mr. Gillies mentioned that the city complained to us. Correct me if I am wrong; I do not believe we heard from the city at all. Was that not your use of words?

Mr. Gillies: Yes, it was, and perhaps you can set me straight on that. On July 24, 1986, you rescinded the convert-to-rent letter of intent. I assumed that was because of concerns by the city. If it was not--

Mr. Cornell: I thought that you were implying that they contacted us when you said they complained to us.

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Mr. Gillies: Why did you rescind on July 24?

Mr. Cornell: I think the answer was given. I thought that you meant the city phoned us to complain. To the best of my knowledge, that did not happen.

Mr. Gillies: This is a very good point, deputy. If, by your officials' comments, it is not your job to inspect foundations, projects and so on and it is the city's, why did you rescind your approval for this project if not at the behest of the city?

Mr. Bissinger: We realized there was a lot of controversy going on with the city. We wanted to re-evaluate our position and to ensure that there were no violations under the building code. It appeared to us the city was not enforcing the building code. What we wanted to do was just stop everything to give us an opportunity to evaluate the situation.

Mr. Gillies: To continue on then, on September 29, you reinstated the convert-to-rent letter of intent. Between July 24 and September 29, you satisfied yourselves that, in fact, the project was meeting the various criteria necessitated by city bylaw.

Mr. Bissinger: Yes. The city and the proponent had resolved their differences. We determined that the proponent had stopped construction and was no longer in violation of the building code.

Mr. Gillies: All right. Were you aware that some three weeks later on October 20, 1986, the building inspector for the city reported to the planning department that construction on the project had once again gone beyond the agreement arrived at by the city that summer?

Mr. Bissinger: No, I am not aware of the extent to which construction commenced again. Whatever that extent was, it ceased construction shortly thereafter again because we advised it that if it did construct, it would be in violation of our program.

Mr. Gillies: That is not what happened the following week, though, because on October 22, 1986, the building inspector again reported that a structural slab had been cast on the site, again without the benefit of a building permit. Were you aware of that?

Mr. Bissinger: We do not have a building inspector onsite.

Mr. Gillies: I appreciate that.

Mr. Bissinger: Our requirements had been satisfied. The project was eligible. There were no rental buildings on the site before. The question of it commencing construction prior to a building permit being issued is a difficulty that the proponent has with the municipality and not with us and not with the convert-to-rent program.

Mr. Gillies: Granted, but I will tell you my concern and it is the same one expressed by Mr. Philip a few minutes ago. Just to continue, on October 22, the building inspector complained about the structural slab. On October 28, the building inspector reported that sheer foundation walls now had been commenced on the project, again without a building permit. The problem here is that without a building permit, it is my understanding--and I have called city officials about this--that the foundation for this building would not have been inspected during the construction phase. Because there was no building permit, as far as the city was concerned, there was no project to inspect. My concern is that Ontario is investing \$3.5 million in a building, the foundation of which was not given municipal inspection. Does that not concern you?

Mr. Pitura: If I can interject on a general basis and help Mr. Bissinger on this, we have to remember that at this stage we have not invested one dollar. Nothing has flown to anybody. All we tried to do was maintain an observation on what was happening between the applicant and the city planning and building officials. All we were doing at that time was watching to see whether the proponent was in violation of our criteria and would force us to withdraw or reinvoke the letter of intent, which is simply a letter of conditional approval, subject, as Mr. Gillies mentioned, to that aspect on page 2, where we have underlined, in our own minds, that the key involvement is the municipality. One of the key elements in that municipal involvement is not only the zoning requirement, but also the building permit itself.

We were in a conditional stage when all this to-ing and fro-ing was happening between the city and the proponent.

Mr. Gillies: Perhaps I should direct this next question to the deputy. The deputy will agree with me that the enforcement of the Building Code Act is ultimately the responsibility of your ministry.

Mr. Cornell: Yes. I have the director of our branch here who can give more specific, detailed answers on this.

Mr. Gillies: If it is the case that the minister is responsible for that act, one might excuse inaction on the part of your ministry if you were unaware of the concerns, and I take Mr. Bissinger's point: This project is under way; there are things happening on a daily basis.

However, will you not agree with and confirm to the committee that these very concerns about the progress of this building without benefit of permit were brought to your minister's attention repeatedly in a letter by Alderman Dale Martin, and that Alderman Martin's concerns were not replied to for a period of some weeks, in fact until the order stopping, for a third time, the illegal construction on this site was issued on October 29, 1986?

Mr. Cornell: We are aware of Mr. Martin's letter. The delay, the time lapse--I think, at the request of the minister, we undertook an investigation. David Hodgson was the man who did that and got back to him. Perhaps you would care to have him make some comment on it.

Mr. D. W. Smith: Can I ask a supplementary here? On federal lands, do you have to have a building permit anyway, if it came right down to it?

Mr. Cornell: I do not believe so but I will let Mr. Hodgson answer that.

Mr. Hodgson: The answer to that question is no. Under the Interpretation Act, lands in right of the crown are exempt, although we try to elicit co-operation from federal and provincial agencies.

Mr. Gillies: Mr. Hodgson, the central concern here, expressed now by several members of the committee--would your understanding be the same as mine, as given me by municipal officials, that in the absence of a building permit, the foundations for this building were not inspected?

Mr. Hodgson: First, perhaps I can go back to one of your earlier statements when you said the minister is responsible for the enforcement of the act. The minister is responsible for the administration of the Building Code Act. The council of each municipality is responsible for the enforcement of the act within its municipal boundaries and it also is responsible for the appointment of a chief building official. Therefore, it is the municipality that takes on the onus of responsibility for the enforcement of the Building Code Act within its boundaries.

Mr. Gillies: With respect, can I pursue that point, Mr. Hodgson? I quite agree, but will you also agree with me that under section 20 of the Building Code Act, when infractions or concerns are brought to the attention of the minister, it is within his power to launch an investigation into that matter?

Mr. Hodgson: Under subsection 20(1), that is quite correct. However, it says the minister may appoint someone to undertake an investigation, which he requested his staff to do and we did investigate it. It does not say the minister can then step in and remove that responsibility from the municipal council. The minister would advise the municipal council of its potential liability in not enforcing the Building Code Act or the proper procedures with respect to the issuance of building permits.

Mr. Gillies: Alderman Martin's letter requested an investigation by the minister under subsection 20(1). What was the minister's response?

Mr. Hodgson: I believe there were a number of letters and I do not have them with me. The original letter that came in July suggested that we undertake this investigation. We informed Alderman Martin that it was the responsibility under the Building Code Act for both builders and municipalities to comply with the Building Code Act.

Subsequent to another letter of request from Alderman Martin, there was an internal inquiry--I would not call it an investigation--of the circumstances surrounding the building permits for this project in consultation with city officials, and it ended at that.

Mr. Gillies: Mr. Hodgson, in your responsibility then for this aspect of the Ministry of Housing's responsibilities, as of October 29, 1986, we have the third stop work order against this project for illegal construction: Would you, in the conduct of your responsibilities, be aware of the convert-to-rent criteria clearly calling for conformity and co-operation with municipal requirements on the part of an applicant?

Mr. Hodgson: No.

Mr. Gillies: You were not. In the course of fulfilling your responsibilities on behalf of the ministry, would you have reported any concern to your colleagues in the convert-to-rent program that in fact these criteria may have been infringed upon?

Mr. Hodgson: Because we are part of the same ministry, obviously the profile and the press coverage of this issue was brought to the attention of various branches across the entire ministry. As I was involved with the chief building official in finding out the circumstances under which the project was proceeding, again because of the concerns raised by Alderman Martin and because of the concerns raised by the chief building official, I was aware that work was proceeding without benefit of a permit. We had discussions saying that my concern was that. I do not get involved with the administration of housing supply programs.

Mr. Chairman: I have to jump in here. The bells are ringing now and if the bells are ringing I am advised that I have to recess the meeting. I want to reconvene, but I do not think we should reconvene with the witnesses. Mr. Gillies has made a request to go in camera. We have other matters to deal with in camera.

Mr. Philip: Let us reconvene in camera.

Mr. Chairman: I ask the members to reconvene and we will look forward to seeing the witnesses next week. I wonder, Mr. Cornell, whether it is possible to have the documents that have been requested.

Mr. Cornell: We will do our best to have them all for you.

Mr. Chairman: Could they be provided to the clerk, perhaps by Wednesday of next week, so that members of the committee can have a chance to look at them?

Mr. Cornell: Just for clarification, let us say that on my file I have a copy of a letter that A wrote B and Mr. Pitura has a copy of that and Joe Blow has a copy of that. You really want only the one copy, do you not?

Mr. Chairman: That is right. Unless there are notes on the side that are relevant and might be of assistance.

The committee recessed at 12:03 p.m.

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STANDING COMMITTEE ON PUBLIC ACCOUNTS

TECHNOLOGY FUND
RENTAL HOUSING LOAN

THURSDAY, FEBRUARY 5, 1987



STANDING COMMITTEE ON PUBLIC ACCOUNTS

CHAIRMAN: Runciman, R. W. (Leeds PC)

VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)

Barlow, W. W. (Cambridge PC)

Callahan, R. V. (Brampton L)

Davis, W. C. (Scarborough Centre PC)

Epp, H. A. (Waterloo North L)

Mancini, R. (Essex South L)

Philip, E. T. (Etobicoke NDP)

Pope, A. W. (Cochrane South PC)

Smith, D. W. (Lambton L)

Wildman, B. (Algoma NDP)

Substitutions:

Fish, S. A. (St. George PC) for Mr. Barlow

Reville, D. (Riverdale NDP) for Mr. Wildman

Clerk: Arnott, D.

Staff:

Malcolmson, P., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Housing:

Cornell, W., Deputy Minister

Pitura, L. F., Assistant Deputy Minister, Social Housing

Bissinger, E. J., Manager, Housing Programs

Hodgson, D., Director, Ontario Buildings Branch

Corke, S., Manager, Housing Conservation Unit

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON PUBLIC ACCOUNTS

Thursday, February 5, 1987

The committee met at 10:08 a.m. in room 151.

TECHNOLOGY FUND

Mr. Chairman: Come to order, please. The first item on our agenda is a notice of motion by Mr. Philip.

Mr. Philip: I have one word that needs to be added to the motion. It does not change it in substance. After the word "file," I think we add the word "forthwith," or, if the committee prefers it in less sophisticated or complicated English, "that the government immediately." Perhaps "immediately" is easier. I will simply add the word "immediately" between the words "government" and "file."

Mr. Chairman: Mr. Philip moves that, in light of the controversy concerning the views expressed by Mr. Abe Schwartz, the standing committee on public accounts invite Mr. Schwartz to appear as soon as possible to provide any information he may have concerning any differences between him and the government with regard to Exploracom; and further, that the chairman request that the government immediately file with the committee any studies undertaken, criteria, guidelines or other documents related to the initial decision to provide a grant to Exploracom, together with any studies, including the Coopers, Lybrand study, related to the decision to cancel the grant.

Mr. Philip: It is fairly clear that what we have is a major difference of opinion in the version of what happened between the Premier (Mr. Peterson) and Abe Schwartz, the president of Exploracom Computer Exploration and Enterprise Centre. We have not had any evidence that there was any program in place that the original application from Abe Schwartz was targeted at. The documents we have would indicate that there was an acceptance of an application by Abe Schwartz, particularly the letter of May 28, 1986, in which the Premier says: "I am pleased to commit, on behalf of the Ontario government, a startup grant of \$17.5 million to help make Exploracom's vital nonprofit program a reality." So what we have appears to be a contractual obligation, certainly a commitment on the part of the government, that \$17.5 million of the taxpayers' money would be spent.

In spite of numerous attempts by members of both opposition parties to get information concerning the criteria that were in place, the guidelines that were in place by which the program would have been evaluated in the first place, and whether or not this program was open to applicants other than the Premier's friend Abe Schwartz, we have been completely unsuccessful.

We have Mr. Schwartz and, I understand, a number of employees, who are holding a press conference at this very time, feeling that they were promised a certain amount of money and that the Premier, for whatever reasons, has suddenly reneged on that promise.

The whole thing just is a business nightmare. It certainly falls clearly within the mandate of this committee. Our mandate is to ensure that moneys are

spent on programs in which there are clear sets of objectives, that there are clear ways of measuring those objectives and that there is an ongoing monitoring process to ensure that money is not being wasted and squandered.

It may well be that the \$17.5 million will not be lost in its entirety, but there may be lawsuits. Certainly startup moneys have been spent. There has been a lot of time and effort on the part of public servants, not to mention the individual private corporations involved.

I think the whole thing is not just a matter for the courts. The question is the competency of the government; the question is the promises made by a Premier publicly, and these are political issues, they are not legal issues. For that reason, I ask that the members of the committee support my motion that we ask for the tabling of those documents and that we invite Abe Schwartz to appear before us for questioning into the rather serious allegations he has made against his former friend, the Premier.

Mr. Gillies: I am sure it will come as no surprise to the committee that our caucus will be supporting this motion. I have for some weeks now been trying to persuade the Premier in the Legislature to table the documents surrounding this project, and he has refused to do so. We want to know, of course, the content of the so-called external reviews that the government maintains were done in order to justify its decision to withdraw the commitment to the Exploracom project. We believe that the Legislature and the people have a right to look at that documentation and see on what basis the decision was made.

But certainly other aspects of this whole affair are as troubling to us as I believe they are to Mr. Philip. I originally raised this matter in the Legislature last June because my concern was that a \$17.5-million commitment of public funds was being made in the absence of a program, in the absence of an application procedure, in the absence of criteria for funding, in the absence of a board of directors for that program and, indeed, in the total absence of any framework that would justify the Premier having made that commitment. It is not the way business has been conducted in this province in the past, and we questioned it at that time.

The next issue, of course--and this is very current now--was whether the commitment of the \$17.5 million was made on a matching fund basis or whether it was a startup grant. I would say for the record that, on the basis of the research we have done, Mr. Schwartz, his board of directors, the employees and, indeed, the Minister of Industry, Trade and Technology (Mr. O'Neil) in the Legislature in June all indicated there was no final decision as of June of last year whether the project was to be of a matching fund nature or not, remembering that the Premier had announced this project several months earlier.

The board of directors and the employees tell us they were at no time under the impression that this project was of a matching fund nature. The Premier maintains in the Legislature that it was known to be matching funds from day one. Clearly, somebody is under a misimpression in this regard. I believe it would be most appropriate for our committee to get to the bottom of this. As Mr. Philip has already mentioned, there are doubtless lawsuits pending in this matter between the employees and the board of directors and, in all likelihood, between the board of directors and the government of Ontario. The government may try to mount an argument that this matter is all done and has not cost the taxpayers any money. That is nonsense. By the time we are through with this one, the legal fees, settlement and whatever else could come of this matter, our sense is that it is going to end up costing the taxpayers some millions of dollars.

Mr. Epp: Tell us about Minaki Lodge.

Mr. Gillies: With the refusal of the Premier to air this matter properly in the Legislature, with the refusal of the Premier to table the appropriate documents in the Legislature, it would appear that our already overburdened committee is going to have to do it in here. For that reason, we will support the motion.

Mr. Callahan: I have listened very carefully and I think perhaps there is a more serious problem here. I do not care if you hear Mr. Schwartz, invite him and talk to him. Before I am able to vote intelligently on the balance of Mr. Philip's motion, I would want some form of legal opinion, other than from myself and my other colleague on the committee who is a lawyer, as to (1) whether the documents he is referring to are not in fact privileged, and (2) if the motion passes and the documents are brought here, what effect that has on a privilege in terms of the lawsuits that my friend has indicated are pending, and I am sure are pending.

I would want to know that first, because I do not think any of us, even though this committee is political, would want to jeopardize the position of the province of Ontario and the taxpayers of Ontario by placing political partisanship before the interests of the people we all serve, the taxpayers. It is very important that, in advance of voting on this particular issue, we do have that opinion. I do not know whether counsel is available to give us that today or if it is something we require to have given to us.

There is a principle here, as I recollect. I think my colleagues on the committee who have practised in the civil area will agree that any document that is prepared by a party in anticipation of possible litigation is privileged, and the privilege is that of the party who has it prepared--in this case, the government.

That privilege can be waived by the parties involved. I am sure that if there were no litigation pending at the moment--and I think the Premier has already said this in the House--I believe he would have no difficulty in sharing the information with my colleagues. But I would certainly urge, in the broader interests of the people out there who pay our salary and pay all of the expenses of operating government, that we not put their interests in jeopardy for our own partisan interests or your own partisan interests without at least first finding out whether or not what I am saying is correct.

I recognize as a fact of the numbers in this room that should you choose to place your partisan interests ahead of the greater interests of the citizens and taxpayers of Ontario, certainly you have the numbers to outvote us. But I certainly urge you, as a matter of caution in advance of doing that, that you have the matter set down. If we can get an opinion before the end of the morning, fine. If we cannot, what is the urgent rush about dealing with this?

1020

As I said before--and I do not say this disrespectfully--it seems to me that every time I come into this committee, we bring back rather high-priced witnesses. We never get to them, because motion after motion after motion is introduced, which entirely changes our agenda. I just find that mind-boggling. I come in here never knowing what is going to be going on on the particular day in question.

I was going to raise my second point as a point of order, but it is unclear whether it is a point of order. This matter is before the courts, or certainly at least proceedings have commenced. There is some difficulty in arriving at a definitive point on the issue as to whether or not, in a civil action, the matter has to be set down for trial before it becomes a matter sub judice.

There are areas where it is going to be your obligation as chairman, under standing order 19(d)(7), as to whether or not, even though it has not been set down for trial--I would certainly expect it has not been, unless the civil process is speeded up significantly from when I have practised--you still are in a position of making a determination--you have to make this determination in either case under 19(d)(7)--that if it is shown to the satisfaction of the Speaker, or in this case, the chairman of the committee, that further reference would create a real and substantial danger of prejudice to the proceedings.

Perhaps it should have been raised as a point of order. We have already heard two of my colleagues literally--and I suppose in a political way; I am not naïve--saying that there is something wrong here, there was a contract. These commitments are being made by members of the Legislature.

I have to question myself and say that the decisions by people in the closest area, the Legislature, have already predetermined that there is something wrong, that the government is going to wind up losing this lawsuit. What kind of effect is that going to have on either a judge or a jury hearing this case? I suggest that any continuation of this and any hyper press over the whole thing is going to do nothing but prejudice the interests that we are all supposed to serve in a nonpartisan way.

Granted, there are partisan politics here. The opposition has the responsibility of looking into matters, but surely to God, they do not look into matters to the detriment of the people we all serve, the taxpayers of this province.

First, on a point of order, I am going to ask you, Mr. Chairman, to determine--and it is not going to be an easy task--whether or not the motion that is being presented by Mr. Philip today in fact is in contravention of the standing orders.

Mr. Philip: You have got to be kidding.

Mr. Callahan: I might assist you by saying that if there is a reasonable doubt one way, you are entitled to allow that reasonable doubt to be exercised in favour of allowing the matters to be brought forth, but I would submit that that decision should be made first.

Mr. Philip: What standing order?

Mr. Callahan: Standing order of the Legislature 19(d)(7). I suggest that this is the first point that has to be decided before we even vote on this.

On the second point, I would ask you, Mr. Chairman, and I am urging my colleagues in the Legislature, to consider the question of having a legal opinion, before we proceed with this, as to whether or not the documentation that is being requested in the latter part of Mr. Philip's motion in fact is contrary to a legal privilege that is attached to those documents; and in the

final analysis, whether by demanding it, the privilege is not inferentially waived, and therefore the people of this province, in terms of that lawsuit, are perhaps placed in a position where it may be to their detriment.

I ask you to rule on the first one, Mr. Chairman, if you wish. On the second one, the reason I cannot vote for this without a legal opinion is that, to me, it would be absolutely reprehensible. It would be totally putting aside the interests of the taxpayers of this province, in general, as opposed to advancing the political interests of particular members of this committee.

Mr. Chairman: At this stage, I assume Mr. Callahan is raising a point of order. He did not make that quite clear, but that is his intent. It is a rather difficult area. I do not know that proceedings have commenced. You made some reference to proceedings having commenced.

Mr. Callahan: I understand that there are actions commenced. Mr. Gillies referred to it and I think Mr. Gillies, being a man of integrity, would acknowledge the fact that he did say there were actions pending.

Mr. Pope: He did not say they were commenced.

Mr. Chairman: We have one point of order.

Mr. Gillies: Just for the record, so that Mr. Callahan can quote me properly from now on, which I know he loves to do, I said that I understood there were legal proceedings pending. I did not say they were in process.

Mr. D. W. Smith: I think they have been initiated.

Mr. Callahan: I understand they have been initiated.

Mr. Chairman: I am going to hear some comments on this point of order.

Mr. Philip: Over the history of this committee and that of the standing committee on the Ombudsman, there is very little of any significance that some government minister or Premier cannot get up and say, "You may not deal with this because there may be litigation in the courts." There is absolutely nothing that goes before the Ombudsman committee, practically, that could not be litigated in the court if a complainant so desired, and there are many things that are before this committee that clearly could be litigated if the complainant so desired.

We do not know that there is any matter before the courts at this point. There has been no evidence of that. At the same time, as this committee has pointed out on so many other occasions, the matter that this committee deals with is not whether there will be compensation to those people who feel they are grieved by a promise, a commitment, or whatever it is, which is the matter that would be before the courts, but rather whether the processes that were in place by the government to grant or promise a very large sum of money were appropriate; whether those programs were open to other applicants; and whether, on cancelling that particular promise, there were substantial evaluative processes in place that justified that kind of cancellation.

Those are political questions; they are not legal questions. What is under question in this committee is not whether the taxpayers should pay the employees of Exploracom. What is under investigation in this committee is the competence or the incompetence of the government to manage this particular

program. That is what is under investigation. That is not a legal matter, it is a political matter. It is not sub judice.

If you use this kind of loose ruling, then practically anything of any significance that either this committee or the Ombudsman committee would attempt to investigate would be sub judice. You must, in all fairness, rule against it. Mr. Callahan has not proved his point that there is any matter even before the courts that in any way affects what this committee is attempting.

Mr. Pope: This sounds to me suspiciously to me like the same attempt by the same member to frustrate and delay the processes of the equal pay bill by sending requests for information and notices on rulings and legal opinions. He rather successfully delayed that bill in committee for approximately two weeks. Quite frankly, he has been sent in here to do the same thing on behalf of the Liberal government of Ontario which does not want the truth to be heard.

Mr. Callahan: On a point of privilege--

Mr. Chairman: Before we hear that point of privilege, I want to point out, Mr. Pope, that we are supposed to be dealing with this point of order.

Mr. Pope: I am.

Mr. Chairman: It did not sound like it to me.

1030

Mr. Callahan: On a point of privilege, Mr. Chairman: I never asked for a legal opinion on any point. We argued points of the bill, and that is all we did.

Mr. Chairman: Address your comments to the point of order Mr. Callahan has raised, please.

Mr. Pope: I wanted to address the point of order. First of all, Mr. Callahan came in here this morning with a researched position vis-à-vis the rules in order to avoid bringing this matter to a head in a vote. He has also taken the position that he cannot vote on this resolution without a legal opinion, when we all know the Liberals are going to vote against the motion anyway. This is another avenue to try to delay the vote until the end.

I find it rather interesting that the reason given for raising this point of order is that we must set political interests aside, that we cannot put political interests before the interests of the people we all serve--the taxpayers.

We have \$17.5 million being given for political purposes by the Premier of this province. We are trying to find out what was going on with this waste of the taxpayers' money, and we have the same rationale that was used by the Premier in giving away \$17.5 million of our money being used for not giving this committee information on it. I find the point of order rather strange, in the least.

If someone wants to claim privilege, if the Premier wants to hide behind privilege the way he did on Wyda--and we had him before our committee and he refused to give us information on the basis of privilege--that is up to him.

We all know the Coopers and Lybrand document was not prepared in contemplation of litigation; it was prepared to review the status of the Exploracom grant. This is all nonsense.

Mr. Chairman: Order.

Mr. Epp: Thank you very much for the opportunity to speak to this very important matter which my colleague the member for Brampton (Mr. Callahan) has raised.

First of all, I want to deal with one or two items. With respect to the Premier, he is the only Premier I know of in recent history who has ever appeared before a standing committee investigating a particular item.

Mr. Pope: He is not. That is wrong.

Mr. Gillies: What about separate school funding?

Mr. Pope: What about the Hydro hearings?

Mr. Epp: The Premier came before the standing committee on public accounts and dealt with Wyda at some length. He was not hiding behind anything.

Mr. Pope: He refused to table any documents.

Mr. Epp: He was answering all the questions of committee members.

Interjections.

Mr. Epp: He was prepared and answered all the questions the members of the committee put before him the time he appeared. To suggest for a moment that he was trying to hide behind something is completely irrelevant and untrue.

Second, I feel extremely uneasy about this matter dealing with Mr. Schwartz's coming before the committee. As my colleague the member for Brampton has indicated, litigation has been proceeded with by the employees of Exploracom, not by Mr. Schwartz. I think for us to deal with these questions at this time is unfortunate and borders on the irresponsible.

Mr. Philip: I thought you always encouraged the Liberals to come before this committee. No more Liberals appearing before the committee.

Mr. Epp: I hate to interrupt the member for Etobicoke (Mr. Philip), because he always has something he wants to say when somebody else has the floor.

Mr. Callahan: He usually has the floor most of the time.

Mr. Epp: The member for Etobicoke indicated that we are dealing with political questions. In fact, one member of this committee has a lawsuit against him as a result of dealing with political questions.

Mr. Gillies: How can you argue that?

Mr. Chairman: I would like to get on here today. We do not seem to be accomplishing much.

Mr. Epp: Given the fact that proceedings have been begun, it is my feeling and, I am sure, the feeling of a good number of Canadians, and Ontarians in particular, that we should not be dealing with this matter at this time. I feel we should get an impartial evaluation as to whether we should proceed on this matter. As the members, particularly of the former government, can attest, the Attorney General at that time often did not deal with matters in the Legislature because he felt they were sub judice.

Mr. Gillies: The current Attorney General (Mr. Scott) has scoffed at that in the House.

Mr. Epp: I do not believe it is going to be in the interests of the citizens of Ontario to proceed with this matter until we have an impartial opinion on whether we can or not.

Mr. Chairman: I am going to make a ruling on this and I am not going to allow any further discussion at this stage.

I am going to find it in order and I am reading the rules of the proceedings in reference to the fact that the matter has not been indicated to the satisfaction of the chairman that court proceedings have commenced. It says on page 18 of the rules of debate, "The application of the sub judice convention must be carefully weighed against the inherent right and duty of the House to discuss any matter considered to be in the public interest."

I am going to suggest at this stage that, if this matter is passed by the committee, I am certainly open to submissions being made to me indicating that this is a matter we should not be dealing with. I would be receptive to dealing with this point of order further if it can be indicated quite clearly that it is a matter we should not be dealing with.

For this morning's proceedings, I am going to find the question in order and allow continuation of the debate and, I hope--as Mr. Callahan pointed out, we have witnesses here and we have another notice of motion to deal with, so I am going to encourage all members, since we know where this is going, I think, to try to expedite matters.

Mr. Epp: Mr. Chairman, with respect, I will challenge your ruling.

Mr. Chairman: All right, you are quite open to do that.

Mr. Callahan: Before that challenge, could I--

Ms. Fish: The challenge is not debatable.

Mr. Chairman: It is not debatable.

Mr. Callahan: I was not going to refer to the challenge.

Mr. Chairman: No, it is on the floor.

Ms. Fish: It is not debatable.

Mr. Chairman: Mr. Epp has made a motion challenging the ruling of the chair. All in support of Mr. Epp?

Ms. Fish: Excuse me. The question that must be put is, shall the ruling of the chair be sustained?

Mr. Chairman: Thank you for your assistance. Shall the ruling of the chair be sustained? Opposed? The ruling is sustained.

Mr. Callahan: I do not wish to discuss the challenge. The upholding of the chair has been decided. I only ask one thing. Since we have witnesses before us who are waiting to give their testimony on a matter we started last week, could this matter be held down?

I have no idea what is in these documents at all. My friend may be quite right; maybe they are not documents that were prepared in anticipation of litigation. Certainly, if they were, I think there is a difficulty in voting for that item without having a legal opinion on whether they are documents with privilege.

Without belabouring the point, Mr. Chairman, my friend Mr. Pope would agree, as a responsible member of the bar, that in an action where documents are demanded by the other side, the procedure is that each party files a statement claiming privilege for particular documents.

Mr. Chairman: All right.

Mr. Callahan: It then falls to be determined by a judge or on the facts whether or not they are privileged.

Mr. Chairman: Thank you, Mr. Callahan. Everyone has heard you. I do not know that it is going to have any impact. I think we have started the discussion on this motion and I would like to move on.

Mr. Philip: I move that the vote now be taken..

Mr. Callahan: I ask that the vote be recorded.

Mr. Chairman: We have a motion from Mr. Philip that the vote now be taken. All in favour? Opposed? Do you wish this recorded?

Mr. Callahan: Recorded, please.

1040

The committee divided on Mr. Philip's motion, which was agreed to on the following vote:

Ayes

Davis, Fish, Gillies, Philip, Pope, Reville.

Nays

Callahan, Epp, Mancini, Smith, D. W.

Ayes 6; nays 4.

Mr. Callahan: This way we will know whom to send the bill to for the damages if we are wrong.

Mr. Philip: Right.

Mr. Chairman: We will move on to the second notice of motion, that by Mr. Gillies.

Mr. Pope: On a second point of privilege, Mr. Chairman: Is Mr. Callahan threatening us with a lawsuit?

Mr. Callahan: No. I am saying that if the action goes badly for the province because of revealing these documents--

Mr. Pope: No. You said you wanted to know whom to send the bill to for damages.

Mr. Chairman: Order.

Mr. Philip: Maybe you could send it to the Premier (Mr. Peterson), who made the promise in his letter.

Mr. Pope: You are just trying to threaten us.

Mr. Callahan: That was not the nature of it.

Mr. Chairman: This is the usual deterioration that accompanies each and every one of our meetings.

Mr. Gillies, will you open the discussion on your motion please?

RENTAL HOUSING LOAN
(continued)

Mr. Chairman: Mr. Gillies moves that the chairman of the standing committee on public accounts issue a request that certain individuals and companies appear before the committee with respect to the convert-to-rent program review; that the invited witnesses, at the time of their appearance, produce all documents, journals, correspondence and things which they have in their possession and lists of things that they had but no longer have in their possession with respect to the Huang and Danczkay project; and that the list of witnesses include the following: Ivan Fleischmann and Canadian InterCorp; alderman Dale Martin; Mayor Arthur Eggleton; employees of the planning department of the city of Toronto; Wilf Caplan and Damaza Consultants Ltd.; Huang and Danczkay and the principals of that company; the chief building inspector and the city solicitor of the city of Toronto.

Mr. Gillies: Very briefly, the intent of the motion is to bring before the committee documents, other items and witnesses I believe can be useful to the committee in the deliberations it is currently undertaking. I think we will all agree that the information and the testimony provided by the witnesses thus far has been most helpful, but there are others enumerated in the motion I am putting who I, as an individual member of the committee, have reason to believe have information they can contribute to the matter we have before us. That is the intent of the motion.

Mr. Callahan: I hate to sound like the negative voice of doom this morning, but it seems to me that with reference to this motion--I recognize that on the last occasion, when we were talking about voting on the question of providing legal representation for him, my colleague Mr. Gillies refrained from the vote because he recognized there could very easily be a conflict.

I think the purpose of any committee, be it a legislative committee or a court, is that justice should not only be done but should appear to be done. I suggest that if Mr. Gillies remains a member of this committee--assuming the motion passes that Mr. Fleischmann and Canadian InterCorp. be brought forward

as witnesses, and I have no doubt it will--there will be the appearance, simply the appearance, of a denial of justice in the light of the fact that there is at present, as we know for sure, a lawsuit pending by Mr. Fleischmann as plaintiff.

I think Intercorp is a plaintiff as well, or is Intercorp a defendant? I cannot recall. I submit that to have Mr. Gillies sit on the committee and examine these witnesses would certainly give an appearance of a lack of justice in that the opportunity to do that will appear, at least to a casual observer and perhaps even an astute observer, as one where he will be given an advance opportunity to examine for discovery, as it were, the individuals involved in the lawsuit.

For that reason, I suggest that Mr. Gillies should be replaced by some other member of his party to continue, at least with respect to Mr. Fleischmann and Intercorp. The others I have no comment about. They are, as I understand it, witnesses who deal with the very issue that is before this committee on Huang and Danczkay.

With reference to the other, I would move that either--

Mr. Gillies: There is a motion on the floor.

Mr. Callahan: All right. I move that we table that now to give Mr. Gillies an opportunity to determine whether what I say is correct.

To vote on it now places the matter squarely, if it is passed, towards calling these witnesses. I submit that Mr. Gillies will be well advised and may want to consider his position in terms of whether it is appropriate for him to continue on this committee in this regard. That is all I have to say.

I might add that this is not a suggestion that Mr. Gillies will not deal with it fairly. I submit there is not only the question of actual justice to be achieved by any committee but also the appearance, and there may be some difficulty in terms of that appearance.

Mr. Philip: On a point of order, Mr. Chairman: It is not Mr. Gillies's notice of motion. In fact, it was originally given notice by Mr. Pope. Therefore, the motion is in order. It is unfortunate that the--

Mr. Epp: Then why does it say "Mr. Gillies"?

Mr. D. W. Smith: Can you not read? His name is right there.

Mr. Philip: I can read. There is obviously a mistake in the agenda.

Mr. Gillies: If I may speak to the point, in the last couple of days I have taken this up at some length with the clerk who has very carefully reviewed the Hansard and will confirm that in fact the notice was suggested by Mr. Pope, got put by myself and that is the way the record shows. I am more than prepared to stand behind this motion.

Mr. Chairman: I do not think there is any point in proceeding with this. Mr. Callahan has offered his legal opinion and it has been heard. I gather Mr. Callahan is making a motion that this matter be stood down, which I am told is an acceptable motion at this juncture.

Mr. Gillies: If I may respond to the comments made by Mr. Callahan,

I understand the spirit in which Mr. Callahan made them and I have no particular quarrel with that, but I would say this: At the time that Mr. Fleischmann and I entered into our difficulties, I indicated to the committee that I would not in any way be deterred from pursuing the work of this committee in the way I thought we should in examining the matters I thought were of importance to this committee and to the people of Ontario.

For me to be swayed in any way by that course, because of a matter which I do not believe directly impacts on this motion anyway, would mean that what I may interpret as intimidation has worked. I want to tell you that it has not worked. I believe this list of individuals and information is valuable, if not necessary to enable us to have a thorough examination of the matter before us. For that reason, I am proud to move this motion, and I encourage all members to vote for it.

Mr. Chairman: We are dealing with the motion to stand down; if that fails, we can get back to the original debate. Did you want to comment on the merits of standing this down, Mr. Mancini?

Mr. Mancini: The merit of standing it down, as Mr. Callahan stated, was that Mr. Gillies could have some time to think this over. My comment in that regard would be that we have recently had a precedent set in the Legislative Assembly committee where a member of the committee who in fact had made an accusation--I refer to the member for Sarnia (Mr. Brandt)--became a member of that committee. After some consideration, he felt he could not be judge, jury, and executioner all at the same time. He saw fit to remove himself from that committee.

I think Mr. Gillies is in the same position as Mr. Brandt was some months ago. I just want to remind the members of this committee of the actions of Mr. Brandt and what happened at that particular time. While we have asked for this motion to be stood down so Mr. Gillies can think about it, I remind Mr. Gillies of what happened in the Legislative Assembly committee and what his colleague did at that particular time.

Mr. Chairman: I will go to Mr. Philip and Mr. Pope and then I would like to move on.

Mr. Philip: I have read the legal allegations made by Mr. Fleischmann against Mr. Gillies. I do not think there is any conflict in this instance between what apparently is a lawsuit and what we are examining in this Legislature, in this committee. I think Mr. Gillies has been a valuable member of the committee. If he has a conflict, or feels in his conscience he has a conflict, I accept that he will take the appropriate course of action. Since I have not heard him take that course of action, I can only assume he is acting in an honourable and impartial way. Therefore, I would not wish to go along with the motion moved by the member for Brampton.

Mr. Pope: Very briefly, I do not think allegations of partiality in terms of judge, jury and executioner wash, particularly from a representative of a party that just tried to be the judge, jury and executioner with respect to this committee's examination of Exploracom.

Mr. Mancini: We were talking about Mr. Brandt.

Mr. Pope: Mr. Brandt was called as a witness by that committee.

Mr. Mancini: He was a member of the committee. He spoke in the House.

Mr. Pope: It is very clear. There is no way that a member of this committee should be intimidated by an organized attempt to keep him out of an examination of the matter that involves public moneys.

1050

The committee divided on Mr. Callahan's motion to stand down the matter before it, which was negatived on the following vote:

Ayes

Callahan, Epp, Mancini, Smith, D.W.

Nays

Davis, Fish, Gillies, Philip, Pope, Reville.

Ayes 4; nays 6.

Mr. Chairman: We are back to the original motion. Is there any further comment on this original motion?

Mr. Mancini: We are at the point where Mr. Gillies has another opportunity to say that he can still participate on this committee, but remove himself for the two witnesses who may cause him trouble, as did Mr. Brandt.

Mr. Pope: I think all the Liberals should remove themselves from the committee the way you are behaving.

Mr. Chairman: We have already dealt with that point.

Mr. Gillies: On a point of order, Mr. Chairman--

Mr. Chairman: Since your name has been raised, I will allow you to speak, Mr. Gillies.

Mr. Gillies: Mr. Mancini should appreciate that in the case of Mr. Brandt in the standing committee on the Legislative Assembly, he was asked to appear as a witness before the committee. That is, to my understanding, the sole reason that Mr. Brandt withdrew from the committee. To date, I have not been asked to appear as a witness before this committee.

Interjection: And you will not be.

Mr. Gillies: I intend to pursue my work in this committee as a member and I do not see any conflict whatsoever.

Mr. Chairman: We have a motion before us. If there are any further comments, I want them to deal with the motion.

Mr. Callahan: I have one. As a clarification, I notice the motion talks about "invite." I gather from that, if the invitation is--and who knows, I cannot see anybody turning down an invitation to meet with this august group, but let us say that they did. Is the motion intended to say that if the invitation is denied there will be some more severe steps taken in terms of--

Mr. Chairman: I suggest that we cross that bridge when we get to it rather than getting into another prolonged debate about what might happen in

the future. I think we want to invite them. If we have to deal with something else, fine, we will deal with it at the time.

Mr. Epp: I just want to say that I believe Mr. Gillies may want to reconsider his position.

Mr. Chairman: Mr. Epp, you are out of order. I am not going to entertain that point. If you are going to deal with this motion, that is fine, but I am not going to get into that discussion again. We have dealt with it at length.

Mr. Epp: It may very well be the case that he may be called as a witness later on.

Mr. Chairman: Order. Confine your remarks strictly to this motion. We will put the vote. We have a request for a recorded vote on this matter as well.

The committee divided on Mr. Gillies's motion, which was agreed to on the following vote:

Ayes

Davis, Fish, Gillies, Philip, Pope, Reville.

Nays

Callahan, Epp, Mancini, Smith, D. W.

Ayes 6; nays 4.

Mr. Chairman: We are on to the convert-to-rent program. We thank our witnesses for attentively sitting there and I assume learning great things about the parliamentary process. I think we can move on. All members have been provided with detailed information by Mr. Malcomson, which I am sure will stimulate a number of questions. I do not know, Mr. Cornell, whether you or your staff had an opportunity to take a look at this.

Mr. Cornell: Yes. These are some extracts from a large number of things we sent to you.

Mr. Chairman: Before we get into questions, would you or any member of the ministry like to make a comment before we get into this?

Mr. Cornell: I do not think so, not right now.

Mr. Chairman: The first questioner is Ms. Fish.

Ms. Fish: I just have a couple of questions that principally arose out of the answers under questioning of the last day. I would like to start with the issue of the requirement of a building permit for the Huang and Danczkay project. My reading of the Hansard and my recollection is that your official's deputy indicated that a building permit was not required. Can you share with me then why, if you maintain the building permit was not required, the city of Toronto was successful in requiring a building permit for this project?

Mr. Cornell: I believe we still do say that the building permit is required before the actual project can be approved and money flowed.

Ms. Fish: I cannot quite hear you.

Mr. Cornell: Do you want to answer that Len, the detail of the program?

Mr. Pitura: One of the requirements of the convert-to-rent program is that the applicant meet all the requirements of the municipality before the letter of commitment and moneys are flowed and one of the requirements is getting the building permit.

Ms. Fish: I take it then that you would suggest a clarification, if not correction, of the advice that was given last day that suggested a building permit was not needed. Is that correct?

Mr. Hodgson: What we are talking about here, I believe, is the statement I may have made at the last session, wherein I said the city of Toronto may have had concerns regarding the necessity for building permits with respect to federally owned lands. The Interpretation Act of Ontario exempts the crown from the requirements of other acts, and in particular the Building Code Act, so therefore a federal agency or a provincial ministry need not necessarily comply with the Building Code Act and may obtain a building permit. However, most federal agencies, and I would say, most provincial agencies do meet all municipal approval requirements and do obtain building permits.

Ms. Fish: I just want to be clear whether you are suggesting to us that the developers of this project did not need a municipal building permit and thereby suggesting to us that the city did not exercise proper authority to require a building permit, to, among other things, require a bond, to undertake inspections of the site and to issue stop work orders as a result of no building permit being issued. Are you in any way suggesting the municipality of the city of Toronto did not act properly in this regard?

Mr. Cornell: No, I am not suggesting that.

Ms. Fish: I think the only possible conclusion then, if you are not suggesting this, is that the particulars of this case in this proposal did, in fact, require a building permit and that this does not fall into the category of prisons or post offices that are undertaken. I will not argue a municipal planning law with you, but I suggest that you might want to give consideration to that since, in my view, it is clearly the case.

Mr. Callahan: If Ms. Fish is referring to a letter, maybe she could tell me what letter.

Ms. Fish: I am not referring to a letter; I am referring to the Hansard I indicated at the outset of my questioning, Mr. Callahan.

Mr. Callahan: I did not hear you, Ms. Fish.

Ms. Fish: I think it is clear that a building permit was required for this development and that the city of Toronto acted quite properly in so requiring and undertaking inspections. I appreciate the clarification, notwithstanding the earlier fog on the issue of the Interpretation Act, that so far as the program is concerned, meeting municipal requirements stands. If the municipal requirement is of a building permit, as clearly it was in this case, that requirement for eligibility stood for this project. Is that correct?

Mr. Bissinger: If I may answer that, with respect to the

convert-to-rent program requirement, yes, it was a requirement prior to the ministry giving a final commitment that they obtain a building permit.

Ms. Fish: Thank you.

Mr. Cornell: Mr. Chairman, could we have the Hansard? They seem to be quoting from the Hansard and we do not have any copy of that.

Mr. Callahan: That is why I was curious where it was coming from.

Ms. Fish: I was looking at an Instant Hansard, but I was relying upon recollection and frankly, Mr. Cornell and Mr. Callahan, the recollection was obviously accurate and the point that Mr. Hodgson made last day was confirmed this morning in this meeting.

May I turn to the question of the ministry rescinding the letter of intent on July 24 because the project was having so much trouble at the municipal level? That, I think, was also under discussion last day and it was indicated that was the reason for the rescinding. Can I simply ask you: If indeed it is correct that part of the reason or indeed the whole reason for rescinding the letter of intent on July 24 was because of the problems the project was having municipally because it was not meeting the municipal requirement, why would you reinstate it on September 29 when illegal construction was still going on at the site and the municipal requirements had still not been met?

1100

Mr. Bissinger: Are you more interested in why the letter of intent was reinstated?

Ms. Fish: Yes. Why was it reinstated in the face of the project's not meeting municipal requirements, when the reason for rescinding it in July was that it did not meet municipal requirements?

Mr. Bissinger: I confirm that on July 24 we rescinded the letter of intent. However, between July 24 and September 29, we were assured by the municipality that the differences between Huang and Danczkay and the municipality had been resolved and that construction had ceased. Seeing that the differences with the municipality were apparently cleared up, we reinstated the letter of intent.

Ms. Fish: I am trying to understand on what basis you believed the problems to have been resolved. You said you were advised by the municipality. How and by whom?

Mr. Bissinger: There was a letter received from the director of planning that gave us the status of the situation with the municipality. There were also verbal discussions with planning staff.

Ms. Fish: Can you tell me which letter you are referring to?

Mr. Bissinger: I do not have the letter in front of me; however, it was copied and submitted.

Ms. Fish: In the package of material that is here in front of us today?

Mr. Bissinger: I do not believe it is included in the package you

have with you. However, the complete file was submitted and it was contained in that file.

Ms. Fish: Could we get a copy of that, please? I am pausing for a moment to see whether we can find the letter and ask you to confirm that it is the letter in question.

Mr. Malcolmson: It may be a while.

Ms. Fish: I am going through a couple of things to see whether I have another area of questioning I can look at.

Mr. Chairman: Maybe the witness could look through the file and find the letter more quickly and we could go on with that line.

Ms. Fish: I do not particularly care what process it is. It would be helpful to have the actual letter they are referring to in front of us.

While that is being sought, would it be your normal practice to rescind letters of intent on being advised that an applicant is not meeting municipal requirements prior to the final submittal?

Mr. Pitura: I have been advised by a member of my staff that there have been other occasions where letters of intent have been rescinded on other convert-to-rent applications in the province.

Ms. Fish: Were you aware of the series of actions in October by the officials of the city of Toronto, particularly the buildings and inspections department, to inspect the site in question and to report once again that the work on the site did not meet municipal requirements, specifically that construction was being undertaken without proper permits?

Mr. Pitura: I am sorry. Mr. Bissinger is wrapped up in trying to locate the letter and I would rather have him answer the question than guesstimate myself.

Ms. Fish: Let me ask about demolition. Would that be something I could explore with you while Mr. Bissinger is looking for that letter? A suggestion has been made that you do provide and permit some demolition as part of the eligibility requirements. Can you tell me what rules or requirements you have on demolition that would make a project acceptable under the convert-to-rent program?

Would it be helpful if I asked you specifically? For example, do you require that any demolition that is undertaken be undertaken with appropriate municipal approvals such as demolition permits? I am satisfied with a policy answer.

Ms. Corke: My belief is that convert-to-rent policy says that everything that occurs under the convert-to-rent program has to be done in compliance with municipal approvals.

Ms. Fish: In accordance with your policy, therefore, would that include any demolition of the site?

Ms. Corke: I believe so, yes.

Ms. Fish: Do you have any policy guidelines or requirements about the time frame for demolition and the time lapse between demolition and construction? .

Ms. Corke: No, there are no policy guidelines about the time lapse. There has to have been something on the site to be demolished when the application for the project comes in. Having done it five years beforehand would not count. I think we have covered this before.

Ms. Fish: So there must be something on the site requiring demolition at the time the application comes forward?

Ms. Corke: If it comes in under the nonresidential to residential conversion, yes.

Ms. Fish: Any demolition that occurs must occur with benefit of any municipal requirement such as a demolition permit?

Ms. Corke: I do not have a policy guideline on that, but I assume it comes under the general guideline that convert-to-rent projects have to comply with the municipal approvals process.

Ms. Fish: Do applicants have to own the structures to be demolished?

Ms. Corke: I assume at the point of application that they own the property that is there to be demolished. There is no guideline that directly and specifically states that. It is an assumption I would make.

Ms. Fish: On the basis of that assumption, would you assume that as a requirement for eligibility?

Ms. Corke: I have never questioned it. It has always been my assumption.

Ms. Fish: If you received an application where that was not the case, do you think it would speak to eligibility?

Ms. Corke: I do not receive applications, but when I am asked on the telephone about projects that people are considering, which happens all the time, I would say that in order to be eligible, the property should be in the possession of the person applying. That would be the advice I would give, but I do not receive applications. I am not in that department.

Ms. Fish: But you would be giving that advice, I am sure, in good faith based on your understanding--

Ms. Corke: I have given that advice.

Ms. Fish: --and your sense of what is required in the eligibility: that the property and structures must be owned by the applicant for an application to be received and considered.

For Hansard's benefit, the witness has been nodding yes in the course of that question and agreeing.

Can you tell me whether the applicant is required to pay for the demolition?

Ms. Corke: I consider that an operational question.

Mr. Bissinger: If the applicant incurred the cost of a demolition, it would be included as part of the capital cost towards the conversion. In some instances where the applicant pays for the demolition, we recognize it as a legitimate capital cost.

Ms. Fish: Can you tell us whether they did in this case?

Mr. Bissinger: I believe that in this case there were some costs logged towards demolition.

Ms. Fish: Can you tell us how much?

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Mr. Bissinger: Yes, I can. I have it here. It will just take a minute.

Ms. Fish: Our grief, the difficulty, is in the witness finding the material. I have the one question outstanding on the letter and subsequent action and now a question on demolition. That will conclude my line of questioning as soon as we can have the responses.

Mr. Bissinger: Yes, I have that information. There was \$60,000 towards the cost of demolition pertaining to the residential portion of the development and a total of \$100,000 for the entire site.

Ms. Fish: I wonder if you will explain to me what you mean by \$60,000 for the residential portion.

Mr. Bissinger: The entire development consists of a residential portion and a commercial portion.

Ms. Fish: Oh, I am sorry. You did not mean demolition of anything that was residential, but rather demolition on the site to be developed as residential?

Mr. Bissinger: That is what I meant.

Ms. Fish: Was it a total of \$100,000 on the site or a total of \$160,000?

Mr. Bissinger: It was a total of \$100,000.

Ms. Fish: Of which \$60,000 was allocated at that portion of the site for residential development?

Mr. Bissinger: Yes.

Ms. Fish: It would therefore be the \$60,000 that would come in under the capital provisions for the loan?

Mr. Bissinger: Yes, that is right.

Ms. Fish: Can you tell me what was demolished for \$60,000?

Mr. Philip: Would the photograph help?

Ms. Fish: I appreciate that you are being helped by Mr. Philip, but I wonder if staff can tell me what was demolished for \$60,000. If the answer is not immediately in front of you, perhaps I can ask for that information. I consider it to be most germane, given the discussion that has occurred at this committee about what was demolished when. Do you have that in your record?

Mr. Bissinger: I do not have that in the record. We do not consider that a pertinent fact.

Ms. Fish: Can you tell me why? If this is a component to be included in what will form the basis of the loan under the convert-to-rent program, why indeed is what was demolished not pertinent?

Mr. Bissinger: We review the capital cost estimates of the conversion and take into account all the aspects that go into working up the total estimated cost. We review that in conjunction with the proposed plans and look at the proposed operating expenses and projected rents. The two items we try to ascertain are whether it is moderate cost housing and whether the project can operate in the black, make a profit. Our convert-to-rent loan is registered on title as a second mortgage, so our interest is the same as that of a banker. We want our mortgage to be secure.

In so far as we had determined that the proposal was moderate cost housing rather than luxury housing, we were satisfied, in reviewing the capital costs, that they were realistic. In determining the operating expenses and the rents, we were also satisfied that they fell within the program parameters.

Ms. Fish: The difficulty I have with the reply here is that we have already established that a key to eligibility involves demolition, that key to the eligibility of the demolition is that it be done with municipal approvals and that any allowance as part of the capital to be covered in the loan on demolition would surely be an allowance that officials would normally wish to check occurred properly with those municipal approvals, and proper demolition that indeed was in the area for the residential.

I want to suggest to you, sir, that it did not occur. You are now indicating to this committee that you did not consider it germane whether there was proper demolition or that the demolition was indeed for the residential area. Save and except for a small and dilapidated transformer vault, the demolition occurred prior to any approvals and occurred without demolition permits from the city of Toronto. It could have been what was allocated under \$60,000, but you do not even know, and you were therefore in the business, on that level alone, of approving a loan that included within it costs that you did not verify in terms of the eligibility in the program itself. I find it incredible.

I know my time is up. I hope to have an opportunity to go back to that again in the future.

Mr. Chairman: The witnesses may want to respond to that. Then we will go on to Mr. Philip.

Mr. Pitura: When we go back--and I have forgotten how many weeks ago we started--the original thrust of this program was to act as an incentive to get people into the rental business. That was number one.

Number two, to ensure as best we could that there would be certain limitations to keep the product at the moderate rental level, as Mr. Bissinger said, to avoid too many encumbrances to applicants across the province and to minimize the administrative costs to the taxpayer, we set simple guidelines for maximum cost: for Metropolitan Toronto, northern Ontario and north of the French River, \$50,000 per unit.

That really is the principal driving force that we apply. This other information on demolition, landscaping and stoves is to give us a handle on information for statistical purposes, and also, as Mr. Bissinger has mentioned, to give us some idea of how the applicant plans to amortize these and set rents that, in turn, reflect the rent levels for that area and meet our general requirements.

The principal things we look at are the capital costs per unit--in this case, the Toronto area, \$50,000 per unit. Second, if that was excessive, then I think we would have been snowed under by applications from large entrepreneurs in the Toronto area. As it turns out, we were not.

This information was tabled at a previous meeting. That was all I wanted to add.

Ms. Fish: In other words, you do not bother to apply the criteria of eligibility when you review the loan.

Mr. Chairman: Mr. Philip, you have the floor.

Mr. Philip: Mr. Cornell, I have reviewed the various documents you have supplied. Would you agree that the recollections of meetings with various people in your ministry tend to be fairly specific as to what was done at those meetings? Would you say that would be a fair statement, from the documents you have supplied?

Mr. Cornell: Yes, I think so.

Mr. Philip: There seems to be one strange exception: That is, when the name of Mr. Fleischmann comes up in these documents, suddenly there seems to be a lapse of memory as to what specifically was dealt with at the meetings with him. Do you notice that pattern?

Mr. Cornell: No, I did not notice the pattern.

Mr. Epp: Maybe he was not very much involved.

Mr. Pope: You had better read the documents.

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Mr. Philip: Could I refer Mr. Pitura to his letter of February 3? It says, "In most cases, these were impromptu meetings which were held because of the availability of people."

Mr. Callahan: Do you know where that is in the package?

Mr. Philip: Yes. It is a letter of February 3 to the clerk of our committee. It has a Ministry of Housing logo and it is at the start of section 3.

In most cases, you said that in reviewing your diary you had not "located any meetings held with Mr. Fleischmann and with representatives of Huang and Danczkay Ltd." However, you recall: "there were meetings held with staff in head office which were not noted in the diary. For example, there was a meeting on November 19th, 1986, that is not shown in my diary, but was held. In most cases there were impromptu meetings which were held because of the availability of people." Can you tell me on whose initiative these meetings were usually held, and who would be at those meetings?

Mr. Pitura: Let me give you just the one that I remember most. That was the one on the 19th, where some of the staff were in from our regional office. We discussed the status of the program and I would have probably said, "Well, because of the importance of this program and the publicity being given to this program, I will make sure that people are aware of what is going on." I would phone, for example, the deputy minister's office to see if the deputy was in. If the deputy was in, I would say, "Deputy, do you have some minutes to spend on reviewing this project?" If the deputy was in, fine; if he was not in, then the meeting would not take place. This is my definition of "impromptu."

Mr. Philip: The deputy would have reviewed this project and would have been in fairly close contact with this project?

Mr. Pitura: Not necessarily. It would be dependent upon my making a judgement call as to whether the deputy should be briefed.

Mr. Philip: You have impromptu meetings on the overall program. You have the largest and most expensive project--it is about three times the cost of the next-largest project if my mathematics is correct--and you say that even though you had continuous, ongoing impromptu meetings with the deputy, you did not discuss this one in depth, the largest project you were undertaking?

Mr. Pitura: I do not think I said that I had continuous, ongoing impromptu meetings.

Mr. Philip: This is what the document says and I think that is what you just answered. You said there were ongoing meetings in which you would drop in to the deputy and you would have this discussion.

Mr. Pitura: No, I do not think I said "ongoing," in all fairness.

Mr. Philip: How many meetings would you have had with the deputy on this?

Mr. Pitura: Maybe two, three. Again, that is a guess.*One, for sure.

Mr. Philip: When would that have been?

Mr. Pitura: It happened on the 19th.

One thing I have not mentioned is that I meet with the deputy every week as a regular administrative practice. I review with the deputy 101 items. At that occasion, I might have mentioned to the deputy the status of the progress, or lack of, but that would be one sort of area where I would casually mention to the deputy--

Mr. Philip: What is the purpose of having meetings with the deputy in which you are briefing him on what you consider to be an important program, and yet you seem to have approached in an almost casual, flippant manner the largest project you had on your books, three times the amount of money of any other project?

Mr. Pitura: I think the files we have tabled indicate we did not treat this project in a flippant manner. We looked at it very thoroughly throughout the various steps.

Mr. Philip: The deputy minister, though, did not get to look at it in any great depth. Is that what you are saying?

Mr. Pitura: No, I did not say that.

Mr. Philip: How did the deputy minister come to understand the file then? You have these jolly little coffee parties and impromptu meetings. How did the deputy minister come to be briefed on this file?

Mr. Epp: Mr. Chairman, on a point of order: The witness never at any point indicated he was having jolly coffee parties. To imply that he said that is completely out of order.

Mr. Chairman: I am sure the witnesses appreciate your coming to their defence.

Mr. Cornell: I will be happy to answer that question. I have a one-on-one session with each of my senior officials and with Mr. Pitura each week. I cannot remember the details of it all, but it was mentioned that this was a project that was coming on and that it was a big one. I got the details at that time. We were really quite excited by it because it had been very difficult, since the program began back in 1983, to try to get anything in the Metro Toronto area, and then to get anything where the units were built at a cost of \$50,000 a unit when even at that time it would have been \$75,000 to \$80,000--it now is about \$80,000--was an exciting thing. That was the extent to which the details were told to me. Obviously, when it got such a high profile later in the year, I wanted to make sure I was briefed on it.

Mr. Philip: You were excited then that this was a great tax-saving endeavour?

Mr. Cornell: No, I thought this was a great plan. The original idea was an incentive program to create rental housing units. It is not a social program. There happens to be a social program aspect to it, which was a bonus, but basically it was an incentive program to increase the supply of housing. It has done a marvellous job all over the province.

Mr. Philip: Your own documents, in fact, show that it was a social housing project, and indeed, that one of the criteria and the promise in one of these documents, if I may just locate it, was that more than 25 per cent would be geared to income.

Mr. Cornell: That is correct but that is a lower percentage than it would be, say, in a private nonprofit or municipal nonprofit. Please correct me if I am incorrect in my interpretation here, but we were trying to meet the overall shortage of supply. It was just one of the many things we were doing. We have a municipal nonprofit program, a private nonprofit program, a co-op;

everything that we can do to create and increase the supply to meet the challenges.

Mr. Philip: You felt that putting apartments on the market at \$712 a month for a one-bedroom or an average apartment, \$712.75, was a way of decreasing the problem in supply?

Mr. Cornell: I am afraid that in downtown Toronto that would come into the margin of being moderate. Did you not have that breakdown we submitted earlier about rents everywhere?

Mr. Philip: We have seen the breakdown. Everybody would love to live in downtown Toronto but most of us cannot afford to live in downtown Toronto.

Mr. Cornell: There are also, by the way, which probably has not been brought to light--they have a feeling that in the Harbourfront area it is all luxury--two nonprofit projects in that area.

Mr. Bissinger: Two Cityhome-owned nonprofit projects, but nine in total.

Mr. Philip: At the end of 15 years then, the taxpayers still own them, and at the end of 30 years and at the end of 100 years, the taxpayers still own those projects. That is quite different from this project, is it not?

Mr. Cornell: The end result, yes.

Mr. Philip: The end result is an awful lot of difference for the taxpayer. Would you agree that with the average rent-geared-to-income--I want to go over the figures I went over with you last week.

Mr. Cornell: Mr. Bissinger, you will have to answer this because I do not have those figures.

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Mr. Philip: This is what is called affordable housing. With the average rent-geared-to-income tenant in Metro currently paying \$228.16 a month, and with the average rents of the Huang and Danczkay project being \$712 per month, do you agree you are subsidizing the units in the first year to the tune of over \$700,000, assuming that 25 per cent are geared to income?

Mr. Cornell: It sounds correct, but I will defer to Mr. Bissinger who has the details.

Mr. Bissinger: What is that figure again?

Mr. Philip: Is there over \$700,000 a year in your subsidy on 25 per cent of the units?

Mr. Bissinger: Yes. You have \$720,000?

Mr. Philip: My calculation was \$726,870. Is that a correct figure?

Mr. Bissinger: Yes, that is in line with our calculations.

Mr. Philip: Do you agree that over the 15 years the convert-to-rent agreement is in place, if we assume an annual increase in rents and an annual

increase in income of five per cent because it is geared to income, and subtract it, you will really be talking about subsidizing these 125 families to the tune of just under \$15 million?

Mr. Bissinger: It is quite easy to calculate the comparative costs of the convert-to-rent rent supplement and the nonprofit rent supplement subsidies in year one. I agree with your figures. However, as you start projecting over 15 years or beyond, too many variables enter into the picture such as interest rates, operating costs and tenant profiles, and you start to make assumptions. We did some cost calculations and it became clear to us that you can derive any number of estimates calculated on these assumptions.

Mr. Philip: Do you not agree, though, that if I used a figure of five per cent, I would be very conservative in calculating the amount of increase, the inflation rate, if you want, over the next five years on rental accommodation, particularly in downtown Toronto?

Mr. Bissinger: You are referring to the rent supplement program.

Mr. Philip: The rent supplement program matches whatever the actual market rent is on those units.

Mr. Bissinger: That is correct. The way we look at the rent supplement program under convert-to-rent is exactly the same as the way we look at the 17,000 units we have under agreement with private landlords across the province. A contractual agreement is entered into with the private landlord; the tenant pays 25 per cent of his income and we subsidize the difference.

Mr. Philip: Most of the private landlords, though, are not renting apartments at this kind of rate.

Mr. Bissinger: That is true, but under new construction, buildings being built in 1986-87, unfortunately, rents are at that level. There are virtually no new rental units being constructed without any government assistance.

Mr. Philip: There are other routes to take such as nonprofit and co-op that in fact keep those units in the public sector after the 15 years.

Mr. Bissinger: Yes, that is right.

Mr. Philip: Do you not agree that using a five per cent inflation rate, my figure of a subsidy of just under \$15 million is in fact a fairly conservative estimate?

Mr. Bissinger: I would not want to comment on that because a number of assumptions can be made, and depending on the assumption that is made, a different final cost is arrived at.

Mr. Philip: The rate last year, assuming someone did not go to rent review, was four per cent. The year before it was six per cent. This year it is 5.2 per cent. If you add on the fact that a lot of landlords do go to rent review and in fact can justify a higher increase, would you not assume that five per cent is a fairly conservative figure? I could have used six or seven per cent, the last 15 years' average, or some other figure and got a higher percentage.

Mr. Bissinger: Yes, all right.

Mr. Philip: At five per cent, assuming the increase in incomes is at the same rate as the increase in the apartment rents--that is an assumption because many of these people will be on assistance and it is unlikely their incomes will escalate at the same rate as the rate of rents in downtown Toronto--would you agree that by deducting the increase in incomes you would end up with a \$15 million subsidy, just in the rent supplements alone?

Mr. Bissinger: Yes, all right. I can accept that.

Mr. Philip: Okay. Would you agree that an additional cost to the taxpayer is the interest on the 15-year loan?

Mr. Bissinger: Yes, that is correct.

Mr. Philip: Okay. Would you agree that Huang and Danczkay's loan was \$3,515,000 roughly?

Mr. Bissinger: Yes, precisely.

Mr. Philip: Would you agree that if I took nine per cent as a rate--rather than 10 per cent which I could have taken or the present rate or worse still, last year's rate, which would be a lot higher--the government would be out of pocket in terms of interest on that loan in the vicinity of just under \$10 million?

Mr. Bissinger: Yes, that is correct.

Mr. Philip: What you have is a project that is going to cost the taxpayers, just in terms of the rent supplement program, over \$24 million in 15 years' time. At the end of that 15 years the taxpayers have absolutely no units to show for it; nothing. If he so desires, the landlord can say, "I no longer want rent supplement people in my building." Do you agree with that?

Mr. Bissinger: It is possible, yes.

Mr. Philip: Would you agree that at 125 units that works out to a net investment of \$194,000 per unit? That is the cost to the taxpayer?

Mr. Bissinger: I did not do that calculation.

Mr. Philip: All you have to do is divide 125 into \$24,253,132 and you get a calculation of \$194,000. Mr. Cornell, do you think it is responsible on the part of a government that it subsidize 125 families \$194,000 each to live on the harbourfront when it has--the minister says 30,000; I use the figure 25,000--25,000 families on the waiting list, in many cases waiting on the streets, for geared-to-income housing? Do you think that is a reasonable use of the taxpayers' money?

Mr. Cornell: I believe the total program we have to try to create the supply--

Mr. Philip: We are not talking about total.

Mr. Cornell: Yes, I think it is responsible.

Mr. Philip: We are talking about this program, Mr. Cornell, not the total program.

Mr. Cornell: I think this program is a very good program. It is a province-wide program. It has proved to be successful and I think it is a very responsible program.

Mr. Philip: For \$194,000 you could have bought them three condominiums in my riding and housed three times as many families and given it away, for heaven's sake.

Mr. Callahan: He is harassing the witness.

The Acting Chairman (Mr. Davis): Mr. Philip, you have one minute.

Mr. Philip: I just want to say to you, Mr. Cornell, that you do not seem to have been in control of this project. You do not seem to be knowledgeable as to what was happening. You are the deputy minister. You are squandering an awful lot of money on this project, on the geared-to-income basis alone. To put this kind of money into a few families when you have that number of people on the waiting list for geared-to-income housing and to have absolutely nothing to show for it after 15 years is irresponsible use of the taxpayers' money and is also quite insensitive to the people in need of housing in this province.

Mr. Callahan: That sounds like the final address to the jury. First, I would like to go through this. It seems, from Mr. Philip's questions, that he does not believe that people who are in assisted housing should have the opportunity to look at the lake, if a proposal presents itself.

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Mr. Philip: On a point of order.

Mr. Callahan: Come on, Ed. That is what you are saying.

Mr. Philip: If the member for Brampton (Mr. Callahan) would have listened, as he so rarely does, or better still if he would have understood, which he does even less frequently, he would have heard me say over and over again that if the same amount of money had been poured into either co-operative or nonprofit housing, it could have produced units that, after 15 years, at least would still be in the public domain, and the taxpayers would have had their investment held secure.

Mr. Epp: But not on the lake.

Mr. Philip: On the lake.

Mr. Epp: That is the point he is making.

Mr. Philip: This property could have been turned into a co-op just as easily--

The Acting Chairman: Mr. Philip.

Mr. Epp: Not for that money.

Mr. Callahan: Let me start off by asking whether, in the official

Mr. Philip: Who owns them after 15 years?

Mr. Callahan:-Mr. Philip, I do not interject when you are asking questions. I wish you would do it through the chairman.

The Acting Chairman (Mr. Davis): I will make the decision on who interjects. Continue with your line of questioning.

Mr. Callahan: Is it called Cityhome?

Mr. Bissinger: Yes, the Toronto Non-Profit Housing Corp.

Mr. Callahan: When was the last time they approached you with a project?

Mr. Bissinger: Several months ago, for their 1987 delivery plan.

Mr. Callahan: With reference to the two existing projects?

Mr. Bissinger: They were approved as part of the 1985 year and are currently under construction.

Mr. Callahan: For Cityhome to make an application, does it have to own the property?

Mr. Bissinger: In this case, it is also on land leased from Harbourfront. It is a very similar situation.

Mr. Callahan: In fact, the land itself does not go back to Cityhome. It remains with the developer.

Mr. Bissinger: Yes, that is correct.

Mr. Callahan: It is not accurate to say that at the end of the 15 years, the situation will be any different than the situation that exists here, in terms of the land.

Mr. Bissinger: Yes. The land lease agreement that Cityhome has with Harbourfront and that which Huang and Danczkay has with Harbourfront are exactly the same.

Mr. Pope: In the other project, is there a landlord-lessor-sublessor relationship as well? Huang and Danczkay is not the lessee; it is a sublessee.

Mr. Bissinger: I do not know the precise lease arrangements Cityhome has with Harbourfront, but my understanding is that it has a 60-year lease from Harbourfront.

Mr. Pope: Or through Peter Street Basin?

Mr. Bissinger: I am not sure.

Mr. Callahan: I gather that when the leases on those other projects expire, the buildings, assuming they are still standing after 60 years, come back to Harbourfront?

Mr. Bissinger: That is correct, yes.

Mr. Callahan: Just to look at another one of the projects on page 84, Coste and Gagnon, that is convert-to-rent as well?

Mr. Bissinger: Yes, it is.

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Mr. Callahan: That is in Toronto, and it is \$1,200 for a two-bedroom apartment.

Mr. Bissinger: Yes, that is correct.

Mr. Callahan: Over on page 85, M. Davidson at the top of page, that is a two-bedroom rental for \$1,100, and J. Ambrosia down around the bottom of the page has rent of \$1,100. Do you recall whether any of those were overlooking the lake?

Mr. Bissinger: I am not sure where they are located, but some of them may be near the lake. I do not recall that they are, though.

Mr. Callahan: Over on page 86, P. Godfrey, \$1,250: Is that overlooking the lake, to your recollection?

Mr. Bissinger: Not to my knowledge.

Mr. Callahan: Below that, a numbered company, 498388 Ontario Limited, \$800 for two bedrooms: Does that overlook the lake?

Mr. Bissinger: No.

Mr. Callahan: J. Szczur, \$1,100?

The reason I have asked you about those is that I would like to go back to the direction of some of the questions. What were the amounts of rents that were proposed for this project? How much were the proposed rents for two-bedroom units?

Mr. Bissinger: They were an average of \$874 for a two-bedroom unit.

Mr. Callahan: And they were overlooking the lake?

Mr. Bissinger: Yes.

Mr. Callahan: If we assume that the ones I have recited to you are not overlooking the lake, contrary to what Mr. Philip may feel, those proposed rents were certainly in line, if not below the median of those items with reference to Toronto rents.

Mr. Bissinger: Yes.

Mr. Callahan: Going on to the question of the building permit my colleague Ms. Fish was referring to: first of all, are the federal lands not Harbourfront?

Mr. Bissinger: Yes, that is right.

Mr. Callahan: Because of jurisdictional matters, the federal government is not required to adhere to any municipal or provincial standards.

Mr. Hodgson: That is correct.

Mr. Callahan: But, as a matter of courtesy, they normally do.

Mr. Hodgson: That is correct.

Mr. Callahan: Those are the steps you people were taking in terms of asking them to comply with these various ordinances and requirements.

Mr. Hodgson: The city would normally go through the municipal permit process to ensure that its planning and development process is adhered to when the building permit is applied for. So yes, they were trying to ensure that the federal government was living up to the official plan and other documents.

Mr. Callahan: With reference to this project, Ms. Fish asked whether the cost of demolition was included as an extra capital cost or whether it was included in the amounts for the specific units. I was not sure what your answer to that was.

Mr. Bissinger: My answer was that it was a recognized capital cost, in that it was included within the upset limit and, therefore, it complied with our guidelines.

Mr. Callahan: Those are my questions. Thank you.

Mr. Pope: There has been a letter produced from Stephen G. McLaughlin of the planning and development department of the city of Toronto. It is dated September 18, 1986. It looks as though it was received on September 22, 1986, from the stamp on it, by Ontario Housing Corp. central region housing programs office. Will you confirm that this letter is the basis of your decision to reinstate?

Mr. Philip: Is that the letter of September 18?

Mr. Pope: Yes, September 18, 1986, to Kevin McCann from Stephen G. McLaughlin, Commissioner.

Mr. Bissinger: Yes, it is.

Mr. Pope: Did you review the contents of the letter at the time you made the decision to reinstate?

Mr. Bissinger: Yes, we reviewed it.

Mr. Pope: Would you confirm that at the time you decided to reinstate, you knew that certain of the conditions to sub-area plan approval respecting the requirements of the TTC, Metro and certain city departments had not yet been satisfied, certain terms of the rental housing agreement had not been settled and the agreement had not been executed?

Mr. Bissinger: Yes, that is right.

Mr. Pope: You knew that and you knew that certain conditions to the development approval remained outstanding.

Mr. Bissinger: Yes, that is correct.

Mr. Pope: As well, there is attached to it some documents which are

referred to. Specifically, I refer you to Appendix I. You knew when you decided to reinstate that:

"Six weeks ago it came to our attention that H and D International Group had started construction without the issuance of a building permit and were in contravention of the Building Code Act. Apparently this problem centered around the fact that an appeal to recently approved minor variances had not been resolved by the Ontario Municipal Board. As a result, Ontario Housing Corp. withdrew its conditional approval of their application pending satisfactory resolution of the problems at hand."

You knew that was the state of affairs as it existed and still existed.

Mr. Bissinger: That is correct.

Mr. Pope: And you knew that: "On August 22, 1986, a letter was received from Huang and Danczkay's legal representative indicating that all matters outstanding with the city of Toronto had been satisfactorily resolved. Before reconsidering the suitability of their application we would ask that you confirm that the previously outstanding issues outlined above, are in fact resolved to the city's satisfaction."

You knew that was a request attached as an appendix and you reinstated the project.

Mr. Bissinger: Yes, that is correct.

Mr. Pope: At the time you reinstated the project, therefore, and I quote from Appendix II:

"Mr. Bissinger indicated that, based on his experience with H and D International Group, he expected that they would be able to provide the information required under the other conditions. However, he did indicate that there was now a question with the proposed rents which are 'unserviced' rents; apparently the ministry had misunderstood that H and D International Group's proposed rents were 'unserviced' rents, whereas generally 'serviced' rents are quoted."

Was that matter outstanding at the time you issued reinstatement?

Mr. Bissinger: Yes.

Mr. Pope: Who approached your department with the request for reinstatement?

Mr. Bissinger: The applicant, Huang and Danczkay.

Mr. Pope: Through whom?

Mr. Bissinger: They called our office.

Mr. Pope: Who called?

Mr. Bissinger: Who called? Either Mr. Danczkay or Mr. Huang; I do not recall.

Mr. Pope: You do not recall, but it could not have been Mr. Fleischmann?

Mr. Bissinger: No, it was not Mr. Fleischmann.

Mr. Pope: You can recall that but you cannot recall who it was.

Mr. Bissinger: There were numerous calls from both Mr. Danczkay and Mr. Huang, but I can tell you with absolute certainty that it was not Mr. Fleischmann.

Mr. Pope: How many calls were there from Mr. Huang and Mr. Danczkay?

Mr. Bissinger: Over the last 11 months?

Mr. Pope: Yes, how often did you talk to them?

Mr. Bissinger: I may have spoken to them eight or 10 times, maybe more, maybe less. There were numerous calls.

Mr. Pope: And what were the calls about?

Mr. Bissinger: About the status of the application.

Mr. Pope: What else?

Mr. Bissinger: That is basically it: our review process and the status of their application.

Mr. Pope: What did they ask specifically?

Mr. Bissinger: They asked how our review was going, when they would receive a conditional approval, whether we had sufficient information, whether there was anything else we required. Those were the nature of their requests.

Mr. Pope: Can you tell me why Mr. Fleischmann was not calling?

Mr. Bissinger: I do not know why he did not call, but I can tell you he did not call.

Mr. Mancini: Why would he know that?

Mr. Pope: I am just getting to that. Relax, you will enjoy it all.

I would like to take you through the documents you have filed. Can you tell me why Frank Mills was writing to the executive assistant to the minister asking for a letter of approval and not to the minister?

Mr. Bissinger: I do not know that.

Mr. Pope: Do you know anything about how this project was being handled by the minister's office?

Mr. Bissinger: I do not know that.

Mr. Pope: Was the executive assistant to the minister the contact in the minister's office whom you used with respect to this project?

Mr. Bissinger: No. I never discussed the project with the minister's office.

Mr. Pope: Did anybody else, of the people who are here? Are you

saying no one discussed this project with the executive assistant to the minister? Is that is what is being said right now?

Mr. Bissinger: I never did.

Mr. Cornell: It is my understanding that he asked Crom Sparling. Would you like Crom up here? He got the request for information. Ask Crom.

Mr. Pope: Anybody else?

Mr. Cornell: Not to the best of my knowledge.

Mr. Pope: I am trying to ask general questions, knowing they cover everyone. I do not want to make this a painful exercise of going through everyone individually. I am trying to ask generic questions and get specific answers.

The Acting Chairman: The bells are ringing.

Mr. Cornell: Just one last thing. Mr. Hodgson also spoke to the minister's office about the billing process.

The Acting Chairman: You are asked to go up for a vote. Could I make a suggestion? There is a meeting of the subcommittee immediately following this. I do not know how long that vote will take. We know the delegation will have to come back, because there are many more questions.

Mr. Pope: That is it for today.

The Acting Chairman: Okay.

Mr. Cornell: Since we seem to be here every Thursday, I have mentioned to the clerk that it has been arranged for several months that the senior officials of my ministry are meeting with senior officials from Quebec in Montreal on the night of February 18 and then on February 19 and 20. We hope you will allow us that time, if this is still going on.

The committee adjourned at 12:02 p.m.

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STANDING COMMITTEE ON PUBLIC ACCOUNTS

RENTAL HOUSING LOAN
IDEA CORP.
TECHNOLOGY FUND

THURSDAY, FEBRUARY 12, 1987



STANDING COMMITTEE ON PUBLIC ACCOUNTS

CHAIRMAN: Runciman, R. W. (Leeds PC)

VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)

Barlow, W. W. (Cambridge PC)

Callahan, R. V. (Brampton L)

Davis, W. C. (Scarborough Centre PC)

Epp, H. A. (Waterloo North L)

Mancini, R. (Essex South L)

Philip, E. T. (Etobicoke NDP)

Pope, A. W. (Cochrane South PC)

Smith, D. W. (Lambton L)

Wildman, B. (Algoma NDP)

Substitution:

Reville, D. (Riverdale NDP) for Mr. Wildman

Clerk: Arnott, D.

Staff:

Malcolmson, P., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Housing:

Cornell, W., Deputy Minister

Bissinger, E. J., Manager, Housing Programs

Sparling, C., Director, Housing Policy and Program Development Branch

Pitura, L. F., Assistant Deputy Minister, Social Housing

Wilson, M. D. A., Executive Director, Field Operations

STANDING COMMITTEE ON PUBLIC ACCOUNTS

Thursday, February 12, 1987

The committee met at 10:06 a.m. in room 151.

RENTAL HOUSING LOAN
(continued)

The Acting Chairman (Ms. Fish): Ladies and gentlemen, perhaps we can call ourselves to order this morning. At the time we adjourned last day on this matter, Mr. Pope had just begun his questioning. We will show him as having 15 minutes left in his questioning.

Mr. Reville: Perhaps I can interrupt Mr. Pope for just a second. I lost track of the agenda. I see the agenda has a long list of names on it but I do not see any specific functions. Are we expecting any of the other people involved today?

The Acting Chairman: I am not entirely certain on your question. The only people we are expecting are those listed here from the Ministry of Housing.

Mr. Reville: Fair enough; thank you.

The Acting Chairman: I believe they are pretty well all in attendance.

Mr. Epp: Madam Chairman, is it your expectation to finish with the ministry today?

The Acting Chairman: The sooner we get started, the sooner we will know that. Perhaps we can move to the item I called, which is Mr. Pope completing his questioning.

Mr. Pope: Who was in charge of piloting this project through? Was it Mr. Bissinger who was basically in charge?

Mr. Cornell: Yes, it would have been.

Mr. Pope: Was the executive assistant, Sean Goetz-Gadon, the contact in the minister's office as far as you and the staff were concerned?

Mr. Cornell: Ed, you can correct me. I believe we followed the normal process. When a query came in, he normally turned it over to someone in the ministry or in the field. I think in this case, which I believe is leading up to last week's question, he involved Crom Sparling, the deputy director.

Mr. Pope: Maybe I can put it another way then. Did you have any contacts from anyone in the minister's office except Sean Goetz-Gadon with respect to this project?

Mr. Cornell: No.

Mr. Bissinger: No, the regional office did not have any contact

whatsoever with the minister's office. Once the application came in, we dealt with it almost exclusively, I would say.

Mr. Pope: Your office?

Mr. Bissinger: Our office, yes; the branch office.

Mr. Pope: What branch is that?

Mr. Bissinger: That is the central regional office.

Mr. Pope: Okay. Have you had contact with Sean Goetz-Gadon then?

Mr. Bissinger: No, I did not.

Mr. Pope: Maybe we will have to go through all this documentation because the documentation shows something quite different. I guess we will have to go through it piece by piece. There is a letter dated October 8.

Mr. Cornell: I believe the original passage to our ministry was to head office. That was when they asked Crom to become involved.

Mr. Sparling: Maybe I can say a few words. I got a call from Len Pitura. He had had a call from Sean. They asked me to talk to Ivan Fleischmann, call him up, sit down with him and explain the assured housing package which had been announced the previous December. This was early in January of last year. In your package at the beginning of section 5, contacts with Mr. Fleischmann, I do have a memo in there to Mr. Cornell explaining my involvement. To the best of my knowledge, this was the first time Huang and Danczkay hooked up with the convert-to-rent program.

What happened was that Mr. Fleischmann wanted an opportunity for somebody in the ministry who was very familiar with the assured housing package to sit down with his clients and talk about the various program components so his clients could determine if there was anything in the package that was of interest to them.

As I recall Mr. Fleischmann's reasoning, he indicated that the written material we had provided was fairly large and voluminous and was not all that easy to digest, and it would be the role of a live body to talk to them and to do that. That I did. I explained the various components of the assured housing strategy, none of which, it turned out, was actually of interest to Huang and Danczkay, but in the process of doing that I also explained the basic convert-to-rent program which incorporated the eligibility criteria that were in the memorandum I had done in June 1984, which I gathered has been circulated previously, talking about demolitions being eligible.

In discussing that, Mr. Huang, as I recall, asked me whether they could use the program for a proposed project they had in mind at Harbourfront. I said I really did not know, but from what they had described of the project, that it did incorporate demolition, etc., I said, "It might very well be eligible for it but what you should do is talk to the regional housing programs office." It was as a result of that conversation that they then did contact the regional housing programs office and that is when Mr. Bissinger and his people took over.

Mr. Pope: Did you have any involvement in this matter after January 1986?

Mr. Sparling: No, none.

Mr. Pope: Were you ever called again by Mr. Fleischmann?

Mr. Sparling: No.

Mr. Pope: Were you ever called again by Mr. Huang or Mr. Danczkay?

Mr. Sparling: No.

Mr. Pope: Who introduced you to Mr. Fleischmann?

Mr. Sparling: I called him.

Mr. Pope: At whose request?

Mr. Sparling: Len Pitura's.

Mr. Pope: How did Mr. Pitura describe Mr. Fleischmann to you when he asked you to call him?

Mr. Sparling: He did not describe him at all. He simply asked me to give this fellow a call. I arranged to meet him and described the assured housing strategy.

Mr. Pope: Do you know who Mr. Fleischmann is?

Mr. Sparling: I did not at the time. All I know now is what I have read in the press.

Mr. Pope: Were you ever told at the time or subsequently by anyone in the ministry of his connections to the Liberal Party or the minister's office?

Mr. Sparling: No. He mentioned at the time that he had worked as an executive assistant for a federal Liberal cabinet minister, but that was about the extent of the discussion at the time.

Mr. Pope: Did he talk about his provincial connections?

Mr. Sparling: No.

Mr. Pope: How often would you meet--sorry; this meeting took place in January 1986, I believe you said.

Mr. Sparling: January 9.

Mr. Pope: January 9. Who else was at the meeting?

Mr. Sparling: Sean Goetz-Gadon, myself, Mr. Fleischmann, Mr. Huang and Mr. Danczkay.

Mr. Pope: How many other meetings did you have with applicants?

Mr. Sparling: Applicants or people who were interested in the assured housing strategy?

Mr. Pope: Both.

Mr. Sparling: Quite a few; mostly telephone calls. In fact, I noticed that at the end of January 1986, I met with a certain Mr. Reville, an individual who--

Mr. Reville: Be careful of writs.

Mr. Epp: You are condemned automatically now.

Mr. Sparling: He had an individual who was interested in producing some housing in his riding and was interested in discussing if there was anything in the package.

Mr. Pope: How many meetings did you have with people who were interested in projects or in policy in 1986?

Mr. Sparling: This is strictly memory; three or four in the early part of 1986. After that point in time, once the assured housing strategy was up and running, we referred most of them to the regional housing programs offices.

Mr. Pope: Okay. At how many of those meetings was the executive assistant to the minister present?

Mr. Sparling: Just the one.

Mr. Pope: Just that one? perhaps the deputy or whoever can help you on this; whoever wants to answer is fine. On October 8, 1985, there is a letter from Frank Mills, director of the planning and development division of Harbourfront, to Mr. Goetz-Gadon, executive assistant to the minister, Ministry of Housing. On the top of it, there is a note that the deputy minister's office received it on October 15, 1985. The ADM of community housing received it on October 17, 1985. At the note at the top it says: "Mr. D. Beesley, PRS by November 8, 1985 (Please note--Contact Sean Goetz-Gadon"--I think the number is the phone number--"for additional details.)" Did anyone contact the executive assistant to the minister to get those additional details?

Mr. Cornell: You will have to answer that, Mr. Pitura. I do not know if we--

Mr. Pitura: This letter, as indicated, was received in the deputy's office and passed down to my office. One of my staff sent it on to Mr. Beesley PRS, please prepare response, by November 8. I would anticipate that Mr. Beesley, who was the general manager of Ontario Housing Corp. at the time, would have passed that letter on, since it is in the Toronto region, to the regional office to prepare the response.

Mr. Pope: Do you know anything about a conversation between Mr. Beesley and the executive assistant about additional details?

Mr. Pitura: No, I am not aware of it.

Mr. Pope: Did you have a conversation with the executive assistant as a result of this letter?

Mr. Pitura: Not that I can recall.

Mr. Pope: Does anyone know who was at this meeting with the minister, the Friday prior to October 8, 1985?

Mr. Pitura: Certainly I am not aware of what was meant by that meeting with the minister, at least I was not--

Mr. Pope: Deputy, I am referring to the first line of the letter. I am asking--

Mr. Cornell: I know nothing about that.

Mr. Pope: Was anyone from the ministry at this meeting? Does anyone know who was at the meeting?

Mr. Cornell: May I ask a question again of my staff here?

The Acting Chairman: Excuse me. Head shakes are difficult for Hansard to record. In answer to the question about whether anyone from the ministry was at the meeting with the minister, there was head-shaking. I wonder, Mr. Cornell, if you could give an oral response.

Mr. Cornell: Relating to this alleged meeting here, no. I was going to ask the question, though, of my colleague; if that was the discussion that came--was there a discussion? Is that the day you were speaking here and you were asked at the end of the conference or something?

Mr. Pitura: No, I really cannot answer that.

Mr. Pope: Incidentally--I may be wrong and if I am I apologize--I do not think we have any information from the minister's files.

Mr. Cornell: I think the whole file was turned over.

Mr. Pope: My apologies. Does that include Mr. Goetz-Gadon's file?

Mr. Cornell: Yes.

Mr. Pope: So no one knows about the Friday meeting that, apparently, initiated the contact on this project.

I would like to ask you a question about November 22, 1985. I guess it is a response to Mr. Mills and it appears to be signed by the executive assistant to the minister and not by the staff of the ministry. It appears to have been typed in central regional HPO. Head office?

Mr. Pitura: Regional housing program office.

Mr. Pope: Okay. Sorry. It was retyped in someone else's office. Is it normal for ministry staff to type letters for an executive assistant to sign, as opposed to the minister, particularly when there is a request for a proposal to develop 502 rental housing units and to offer 25 per cent of the units under the rent supplement program? Is it normal for the executive

assistant to talk about making a firm commitment on behalf of the minister and the ministry?

1020

Mr. Pitura: Maybe I can answer that. Certainly, in my experience in the last several years, there have been occasions when staff have been asked to draft letters for the executive assistant's signature to whomever the executive assistant of the day contacted or made a commitment to deliver some information.

Mr. Pope: Was this letter discussed with the executive assistant or the minister before it was typed or sent?

Mr. Bissinger: No. It is quite customary for letters to be written in the regional program office by staff. In fact, that is the normal procedure when it pertains to a specific project because that is where the program and project details reside.

Mr. Cornell: Excuse me. This letter does not make a firm commitment.

Mr. Pope: No. He says he is "not able to make a firm commitment." I imagine that an executive assistant would never even consider making a firm commitment for 502 units, 25 per cent of them funded by the rent program. I cannot understand why this letter was not signed by the minister.

Mr. Cornell: I think the original letter was written to Mr. Goetz-Gadon, so the letter was prepared. I do not think it is uncommon for us to do that.

Mr. Pope: Was it your understanding that there would be no correspondence on this project directed to the minister? How can you have a major project in the program and all of a sudden no reference to any correspondence to and from the minister?

Mr. Sparling: Just to comment, at this time it does not appear that the project was proposed under any specific program. It was at a later date that it was proposed under the convert-to-rent program.

Mr. Pope: All this correspondence started as a result of the meeting with the minister. Is there any explanation of why then the minister is not sending or receiving letters and it is all being done through an executive assistant and yet it is the major project you are involved in?

Mr. Cornell: As Mr. Sparling has tried to explain, at this stage I do not know anything about the first meeting. I do not know whether it was a casual meeting, a formal meeting, what it was between the minister and Mr. Mills. However, I do know from what Mr. Sparling has testified to the committee that they came in to inquire about a variety of things in the programs and how they might use them. They did not realize that at this time it was even possible to go to convert-to-rent. That is the answer.

The Acting Chairman: Time; one last question.

Mr. Pope: I am turning to the December 11, 1985, document. It is a letter to David Smith of Lyons, Arbus and Goodman from David L. A. Gordon, development co-ordinator. It is a briefing note.

First, How often are briefing notes sent to solicitors with respect to these kinds of projects? Second, page 1 is missing. Third, there is a reference to Mr. Fleischmann having "spoken twice to provincial officials to emphatically express...strong interest in incorporating the rent supplement program into their project." That is item 4 on that two-page memo. I have only page 2 of it. Can you explain the background to this memo to a private solicitor? Does anyone know about it?

Mr. Bissinger: I do not really have a lot of detail on it. My understanding of that letter is that David Smith acted as solicitor for Harbourfront Corp. They were trying to point out the advantages of the province being involved in assisting or facilitating the development of this project.

Mr. Pope: What about this statement that "Mr. Fleischmann has recently spoken twice to provincial officials"? That is prior to December 11, 1985.

Mr. Bissinger: I am not sure who the two occasions referred to; possibly one of those referred to Mr. Sparling.

Mr. Pope: No, he said January 1986.

Mr. Bissinger: Oh, January. In that case, I do not know to whom that refers.

Mr. Pope: I will have to get into further documents. All I can say is that Mr. Fleischmann's name is written all over this.

Mr. Pitura: I believe that at some time in that period I received a general call from Mr. Fleischmann about the philosophy or policy of rent supplement generally. If I recall this was all tied into the city of Toronto's requirements for assisted housing as part of their development and approval process. I think it was a general inquiry from this Mr. Fleischmann who was interested as to what the general approach was to rent supplement, what it entailed and whether there was any such thing as advanced commitments on rent supplement.

I would guess Al might have been one of the officials who was referred to in this letter of December 11.

The Acting Chairman (Ms. Fish): I have noted that you wanted to go on the speaker's list. The next person I have is Mr. Gillies.

Mr. Gillies: I have no questions at this time.

The Acting Chairman: Mr. Pope, I guess we go back to you.

Mr. Reville: Well, I can ask a couple, I guess.

The Acting Chairman: Well, if you would like to Mr. Reville. You are welcome to go on to the list.

Mr. Reville: Thank you, Ms. Chair. That is an appropriate form of address in these times, I want you to know that. Mr. Gillies agrees.

Mr. Gillies: It is just that I never feel comfortable talking to furniture.

Mr. Reville: It just depends whether it answers you. Is it unusual to get this much correspondence on a project? Mr. Pitura, you have been around a while.

Mr. Pitura: Sometimes I think I have been around too long.

Mr. Reville: We are not dealing with that problem.

Mr. Pitura: Touché. I deserve that comment. Yes. I would think there is probably more correspondence on this project than the average.

Mr. Reville: You got support letters from a number of regular sources. That would not be unusual, would it?

Mr. Pitura: No. It is my experience with many government housing programs that usually an applicant tries to get as much support as he or she can for whatever assistance the individual is seeking from government.

Mr. Reville: The names that appear again and again in the file are related to the Harbourfront Corp., their solicitors, solicitors for Huang and Danczkay Ltd., lobbyist for Huang and Danczkay Ltd., and the mayor. I assume that is fairly normal, is it not that if people want a project to go ahead they send you these kinds of letters?

Mr. Pitura: Yes, we get lots of letters.

Mr. Philip: You have got about ten minutes before you speak.

Mr. Reville: Well, thank you. Mr. Justice Philip has returned so I am going to be able to leave you.

Mr. Philip: I gave my proclamation on Bill 158.

Mr. Callahan: I thought he was sitting on the Privy Council.

Mr. Reville: Would you say that the meeting activity was more or less frenzied than normal or again in terms of meetings that your ministry would have had both internally and externally? Maybe Mr. Bissinger can comment on that.

Mr. Pitura: I would rather have him answer that.

Mr. Bissinger: I would not say that they were more frenzied. I would say that they were possibly drawn out over a longer period of time.

Mr. Reville: Because of the size of the project and the complexity of the issues?

Mr. Bissinger: Yes, I would say so.

Mr. Reville: Can you tell us whether, under the convert-to-rent program you have ever dealt with another project quite like this in terms of size, and in terms of the zoning issues and in terms of the aspects of the convert-to-rent program that were relevant to this particular project?

Mr. Bissinger: It was really the only project of any significance in the city of Toronto that we dealt with.

Mr. Reville: Were you at all involved in the Lichee Garden project?

Mr. Bissinger: I was not personally, no.

Mr. Reville: Some other people in the convert-to-rent program would have been?

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Mr. Bissinger: Yes.

Mr. Reville: Eventually, it did not go ahead under that program but there were, as I understand it, a number of discussions. It was also a large project.

Mr. Bissinger: That is correct, yes.

Mr. Reville: For members of the committee, the city of Toronto investigated using the convert-to-rent program to build a building on Chestnut Street and Elizabeth Street to replace the Lichee Garden Restaurant with some housing. It is being funded under a different program.

Maybe I can ask Mr. Sparling a question. You mentioned a meeting that you and I had. Is that unusual for you to have a meeting with a member and somebody who wants to build?

Mr. Sparling: Fairly. I have not had very many individual MPPs approach me with a specific request.

Mr. Reville: That is amazing. For the record, would you indicate to the committee what you and I discussed?

Mr. Sparling: I would be pleased to, Mr. Reville.

As I recall, there was a developer in your riding who was interested in constructing a large, perhaps multi-towered residential development. You and the developers were interested in determining if there were any programs in the assured housing package that would be of assistance to them.

Mr. Reville: Yes. Basically, it sounds like the same kind of meeting that you had initially with Mr. Fleischmann.

Mr. Sparling: Yes it was.

Mr. Reville: I do not have any further questions.

The Acting Chairman: Mr. Callahan.

Mr. Callahan: I will pass.

The Acting Chairman: Thank you, we will go back to Mr. Pope.

Mr. Pope: I see we are not making progress in the chair.

Mr. Chairman: I will remember that. You are out of order.

Mr. Pope: I want to go back to the December 11th letter. Mr. Pitura, you were saying that you were contacted by Mr. Fleischmann. How did he describe himself?

Mr. Pitura: He described himself as a lawyer and representative for a client on the Harbourfront. I believe he also made some reference to the fact that at one time he was an executive assistant to the federal minister.

Mr. Pope: Did he talk about his provincial connections?

Mr. Pitura: Not to my recollection, no.

Mr. Pope: He never had any. He described himself to a Deputy Minister of Industry, Trade and Technology as a Liberal hack. He was quite proud of that fact and of his provincial Liberal connections. I think if you had been in the standing committee on public accounts most of July, August and September--

Interjection.

Mr. Pope: I know, having as much fun.

How many phone calls did you have to Mr. Fleischmann?

Mr. Pitura: I would guess in the order of four or five.

Mr. Pope: What were the dates of those calls?

Mr. Pitura: There were about one or two calls in 1985. This was inquiring on the rent supplement parameters. There were maybe two or three in 1986. I guess that was the time when the problems at the city with respect to the building permit were in the papers. Mr. Fleischmann, for his own reasons, called me to give his understanding of what was going on at the city, which I always found interesting because they did not mean much to me. I simply notified the regional staff to keep a watch on the program.

Mr. Pope: The other two or three calls were in early 1986?

Mr. Pitura: In the spring or early summer of 1986.

Mr. Pope: How many calls did you get from the executive assistant on this project?

Mr. Pitura: I do not recall getting any other than the one before the latter part of 1985. It was around then. I asked staff to set up a meeting.

Mr. Pope: Mr. Bissinger, how often did you get called by the executive assistant to the minister on this project?

Mr. Bissinger: I did not receive any calls at all.

Mr. Pope: In the letter of December 13, 1985, to the executive assistant from Mr. Smith, of Lyons Arbus and Goodman, he refers to two recent conversations Mr. Fleischmann had with provincial officials. Are those the same referred to in the December 11 memo? It is on page 3 of the letter, item 4.

Mr. Cornell: I do not think we know, but it is likely that the one to Mr. Pitura certainly was.

Mr. Pope: Who gave you this letter?

Mr. Cornell: It was in the minister's files when your committee requested it.

Mr. Pope: You did not have a copy of this?

Mr. Cornell: No.

Mr. Bissinger: In all probability, it was passed down the line and ended up in the project file.

Mr. Pope: It was in the project file?

Mr. Bissinger: Yes.

Mr. Pope: Mr. Pitura, in your letter of February 3, 1987, to Mr. Arnett and the standing committee on public accounts, you say:

"Some time in late 1985, I was contacted by Mr. Sean Goetz-Gadon, executive assistant to the minister, about the potential for a convert-to-rent project on the Harbourfront. I cannot recall the specifics of the discussion, but in all likelihood, I suggested that for potential projects, the prospective applicant should talk to my staff."

Was the project identified to you by the executive assistant?

Mr. Pitura: I think there was only a general reference to a possible project at Harbourfront, because at that time there was no sort of understanding. Certainly, I was not aware of any eligibility of any project in that area for our funding at that time.

Mr. Pope: Do you know if that meeting took place?

Mr. Pitura: Yes, that was the meeting that Crom Sparling handled.

Mr. Pope: Where and when did that meeting take place, Mr. Sparling?

Mr. Sparling: We first went to Mr. Fleischmann's office. Mr. Goetz-Gadon and I walked from our offices up to Mr. Fleischmann's office, which is on Bellair and Bloor, and we then--this was just before lunch--walked over to the restaurant at the corner of Bellair and Cumberland, the name of which escapes me, upstairs. It was over lunch that we chatted with Messrs. Huang and Danczkay.

Mr. Pope: Why did you go to Mr. Fleischmann's office?

Mr. Sparling: Because he asked us to meet him there.

Mr. Pope: How many other agent's offices have you been to in 1986 on housing projects?

Mr. Sparling: I have had lunches with a number of developers and representatives from the building industry.

Mr. Pope: How many?

Mr. Sparling: I could not guess off the top of my head. A dozen; 15.

Mr. Epp: Is this a new experience that you may have gone to a

developer's office or something of this nature? Is this unique since, for instance, June 1985, or did you do this in 1984 or 1983 or meet with developers and discuss projects?

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Mr. Sparling: We regularly meet with people from the industries so we can maintain some degree of currency with what is going on in the industry. Generally, we talk about specific initiatives the government may have under way, usually not specific projects. If we are talking specific projects, it is usually done at the regional housing programs offices level, which would be Ed Bissinger and company. Certainly, when the particular meeting with Mr. Fleischmann started, we were not talking of a project; we were talking of the assured housing strategy, which is why I was there talking to Mr. Fleischmann from a policy perspective, as supposed to the RHPO.

Mr. Epp: So that is not a unique experience for you.

Mr. Sparling: No.

Mr. Epp: It is not something you have been cautioned not to do, not to speak to developers, meet with them in their offices or something of that nature.

Mr. Sparling: I would say it is the reverse. If we are going to have any credibility with people in the industry, we have to understand what they are thinking and what is happening in the industry.

Mr. Pope: We are not talking about a meeting with a developer; we are talking about your going to an agent's office. Mr. Fleischmann is not a developer. How many agents' offices have you attended in 1986? They are not developers.

Mr. Sparling: The role of Mr. Fleischmann--you have called him an agent--was not known to me at the time I went to have lunch with him.

Mr. Pope: What did you think he was?

Mr. Sparling: I was simply asked to meet with this fellow. He had contacts. He was a lawyer who worked for developers.

Mr. Pope: Who asked you to meet with him?

Mr. Sparling: Mr. Pitura.

Mr. Pope: Were you asked by the executive assistant to set up that luncheon meeting?

Mr. Pitura: I was asked to set up a meeting.

Mr. Pope: By whom?

Mr. Pitura: The executive assistant.

Mr. Pope: Did Mr. Fleischmann speak to you over lunch about his strong provincial Liberal connections?

Mr. Sparling: No.

Mr. Pope: Did he talk to you about his friendships with anyone on the political level?

Mr. Sparling: No. As I said, the only reference he made was to his previous incarnation as an executive assistant at the federal level.

Mr. Pope: Mr. Pitura, there is a further letter dated February 3 in which you say: "...have not located any meetings held with Mr. Fleischmann and with representatives of Huang & Danczkay Ltd. on the convert-to-rent project. However, I recall there were meetings held with staff in head office which were not noted in the diary."

Do you know what those meetings were and when they were held? Did you have a chance to review it after your letter?

Mr. Pitura: I checked my diary, and I could not find any notation of the meetings. That did not surprise me because, as I said at the hearings last week, there are many occasions when I have meetings with staff, when I find out, for example, that Mr. Hill or Mr. Wilson is in my area and I want to talk to one of them about the status of a project. They are available, I call them and we spend about five or 10 minutes discussing what is happening.

Mr. Pope: Other than internal meetings, was there anyone else present at those meetings that you recall?

Mr. Pitura: No.

Mr. Pope: Mr. Sparling, in your memo of February 3, 1987, to the deputy minister, with reference to Mr. Arnott's letter, how many luncheons have you had with the developer and executive assistant to the minister since June 1985?

Mr. Sparling: That is the only one.

Mr. Pope: Did Mr. Fleischmann and the executive assistant obviously know one another?

Mr. Sparling: Obviously, no. That is a judgement call; I cannot say.

Mr. Pope: They did not talk about mutual matters?

Mr. Sparling: No. The discussion was pretty clean on the assured housing strategy.

Mr. Pope: Were there other discussions?

Mr. Sparling: No.

Mr. Pope: How long was the luncheon?

Mr. Sparling: That is a good question. I would have to see what I had after it.

Mr. Callahan: Can you tell us what you had for lunch?

Mr. Sparling: As I recall, it was not a very good lunch.

Mr. Callahan: Alan was going to ask you that.

Mr. Sparling: I had a tonic with a twist of lime; I remember that. I

do not know. It presumably was two hours. It does not say on my calendar.

Mr. Pope: Did you have any subsequent meetings or lunches with Mr. Fleischmann or Messrs. Huang and Danczkay?

Mr. Sparling: No, I did not.

Mr. Pope: Mr. Bissinger, on January 10, 1986, you met Messrs. Huang and Danczkay in the regional office. Was Mr. Fleischmann present?

Mr. Bissinger: No, he was not.

Mr. Pope: In the light of all the other information on the file that you are aware of, was that unusual?

Mr. Bissinger: I see no reason for Mr. Fleischmann to have been there. The applicants wanted to talk about the application requirements. They were interested in applying for the program. They were quite capable, I would have said, of conducting that type of meeting on their own.

Mr. Pope: If they were capable of conducting that meeting, why would Mr. Fleischmann be meeting 13 days later with the acting manager of housing programs?

Mr. Bissinger: I suppose he was interested in knowing how the project was progressing.

Mr. Pope: On January 14, 1986, you had another meeting. Was Mr. Fleischmann there?

Mr. Bissinger: No, he was not.

Mr. Pope: What was discussed there?

Mr. Bissinger: We discussed the application process in more detail. We advised them of the type of documentation in detail required for a convert-to-rent application. We talked about the approximate length of time it would take to review an application of this type. I think that was pretty well it.

Mr. Pope: Did Mr. Sparling ask that you meet on the January 10 and 14 with Huang and Danczkay?

Mr. Bissinger: No. I believe Mr. Sparling directed them to the regional office if they were interested in convert-to-rent.

Mr. Pope: That is why they came to you?

Mr. Bissinger: Yes.

Mr. Pope: On January 29, you had another meeting?

Mr. Bissinger: Yes, that is correct.

Mr. Pope: Was Mr. Fleischmann present?

Mr. Bissinger: No, he was not.

Mr. Pope: On February 6, 1986, was Mr. Fleischmann present?

Mr. Bissinger: No, he was not.

Mr. Pope: I think you indicated you had three or four phone conversations with Mr. Fleischmann.

Mr. Bissinger: Yes, that is correct.

Mr. Pope: Was that around the time of these meetings?

Mr. Bissinger: Yes, I think so. I think those phone calls were all prior to the issuance of the letter of intent, which was on April 23. That is quite correct. They were around the latter part of January, February and early March.

Mr. Pope: Mr. Pitura, you received how many calls?

Mr. Pitura: I think it was about two, three or four in 1986, something like that.

Mr. Pope: Mr. Fleischmann also contacted Murray Wilson, executive director of Ministry of Housing field operations in January 1986?

Mr. Wilson: Yes.

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Mr. Cornell: Murray is here.

Mr. Wilson: Yes.

Mr. Pope: So those are three different individuals whom Mr. Fleischmann called in late December and January 1986.

Mr. Cornell: I believe the ones with you, Murray, were on different subjects, were they?

Mr. Wilson: No.

Mr. Cornell: They were not.

Mr. Pope: The memo is here, I am sorry. It is right after Len's third letter, I think.

Mr. Chairman: You have two more minutes.

Mr. Pope: You spoke twice to Mr. Fleischmann, once with respect to the Harbourfront project, and again in the latter part of 1986. I believe Mr. Wilson's memo says he spoke about a Cityhome project, according to the face of it.

Have any of you at any time had any conversations with Wilf Caplan? I just want to premise this by saying that from another investigation this committee undertook we know of the existence of a two-page report from Mr. Caplan that he has signed, entitled Huang and Danczkay, and it appears to have been based on conversations with Ministry of Housing officials. Can anyone tell me about any conversations with Wilf Caplan?

Mr. Cornell: I did not have any.

Mr. Pitura: I did not have any.

Mr. Bissinger: Nor did I.

Mr. Pope: Did Mr. Wilson have any calls from the executive assistant to the minister? Let me put it this way and maybe you can answer. Did any official have calls from the executive assistant to the minister on this project, other than those we have just gone through?

Mr. Cornell: To the best of my knowledge, no.

Mr. Pope: Okay.

Mr. Chairman: One final question, Mr. Pope.

Mr. Pope: I think that is it.

Mr. Philip: I would like to refer you to page 11 of your briefing to us in your initial statement you made on January 22. Can you table with the committee any studies you have done that would verify the conclusion that you have come to in the last paragraph on that page?

Mr. Cornell: I just want to make sure that I am on the right thing. Is this the one? Emerging Directions, 1986?

Mr. Philip: No. it is Statement by Ward Cornell, Deputy Minister of Housing, to the Standing Committee on Public Accounts, on January 22.

Mr. Cornell: Yes, what was your question again?

Mr. Philip: Can you table with the committee any studies you have done that show a comparison between what it would cost to put up a nonprofit housing project on that site and the present system, which is costing the taxpayers so much to subsidize a few families on the waterfront?

Mr. Pitura: To the best of my knowledge, we have never undertaken such a study.

Mr. Philip: How can you come to the conclusions you come to without a study?

Mr. Pitura: I do not know what conclusions you refer to.

Mr. Philip: The conclusions are in Mr. Cornell's statement: "Convert-to-rent requires less taxpayers' outlay than programs such as nonprofit. The upfront convert-to-rent loan goes on a repayment schedule in year 10 and is completed at the end of year 15, whereas the government subsidies involving operating assistance for nonprofit housing go on for 35 years."

Is the intent of that statement, Mr. Cornell, not to give the impression that convert-to-rent, which you have on the waterfront, is cheaper than going the nonprofit co-operative route? Was that not your intent in that statement?

Mr. Cornell: I am sorry. You will have to repeat that. It was my intention that it is not cheaper? Would you restate that, please?

Mr. Philip: Is the intent of the third paragraph on page 11 not to give the impression that this very expensive project is actually less expensive than going the route of nonprofit, such as co-operative housing, on that site?

Mr. Cornell: I do not know if it was the intention, but I think at the same time it is a valid point we were trying to make on this project.

Mr. Philip: Do you believe that it is less expensive to go this route than nonprofit?

Mr. Cornell: On this particular--

Mr. Philip: On this site. We are talking about this site and this project.

Mr. Cornell: Looking at it in one way, yes.

Mr. Philip: I do not look at it in one way. I look at it in terms of dollars and cents to the taxpayer. Is it cheaper or is it not cheaper to go this route? You just said it was cheaper to go this route. Is that your position or is it not?

Mr. Cornell: Yes.

Mr. Philip: How can you say that it is cheaper when you do not have a study to show that?

Mr. Pitura: Mr. Chairman, if I could--

Mr. Philip: I am asking Mr. Cornell. He is the deputy.

Mr. Cornell: All I would say is that when we create these programs and we look at these matters, we do not always conduct outside surveys but we do work within. Remember that this particular project is an incentive to increase the supply; it is not a social housing project. The staff did develop a rationale and a point of view, and with the way in which these units were built, we were coming in at a lower subsidy for the establishment of these units, cheaper than what we would pay on a municipal nonprofit or a co-op. For the actual nuts and bolts and details of that, I will turn it over to Mr. Pitura.

Mr. Philip: You are sure that it would be less in the total dollars spent?

Mr. Cornell: We were putting in \$7,000 a unit. Am I not correct in that?

Mr. Philip: I am sorry. You were spending a lot more than \$7,000. You were paying interest on that.

Mr. Cornell: I guess we do that with all our projects.

Mr. Philip: You were paying a subsidy then.

Mr. Cornell: There is no doubt about it. If you are saying that housing is expensive, it is very expensive, yes.

Mr. Chairman: Would you entertain a brief supplementary from Mr. Callahan?

Mr. Philip: Not at this moment.

Mr. Callahan: Do you run the chair?

Mr. Chairman: No, I try to. If the questioner is not in agreement, I think we are going to move on. I try to have the support of the questioner.

Mr. Philip: A few minutes ago you said that it was cheaper running this project than if a nonprofit or a co-operative project had been built on the identical site. Is that still your position?

Mr. Cornell: I believe that is true. My staff can correct me on this, but the cost per unit is less than the cost per unit for building a municipal nonprofit. Correct me if I am wrong on that, Mr. Pitura.

Mr. Pitura: The number of applications I have seen on convert-to-rent indicated that the average capital cost for converting nonresidential to residential was quite a bit lower than constructing a new unit. Just from a pure capital dollar perspective, for example, as we indicated last week, the capital limitations on convert-to-rent in Toronto and northern Ontario is \$50,000 per unit capital cost, whereas for a nonprofit unit down on the waterfront it would probably be in the order of \$15,000 or \$20,000.

Mr. Philip: You did not look into the possibility of converting this project to a nonprofit, did you?

Mr. Pitura: We knew there were other nonprofit projects under development and under consideration in that area already and, therefore, that was going to take its own course of events.

Mr. Philip: The answer is no. Is that correct?

Mr. Pitura: No, because--

Mr. Philip: The answer is no.

Mr. Pitura: This program was designed for other than nonprofit.

Mr. Philip: If it is a convert-to-rent, if the land is owned by the public anyway, by the Toronto Harbour Commissioners, what is preventing a nonprofit corporation such as the Labour Council Development Foundation, Lantana Non-Profit Homes or one of the nonprofit co-operative builders from converting, if you want, this into an apartment complex, the same way as a profit corporation? Is there anything that would prevent that?

Mr. Pitura: No.

Mr. Philip: But you did not look into that possibility?

Mr. Pitura: They did not apply either.

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Mr. Philip: Before you spent this exorbitant amount of money on a

few families, you did not make any of those people aware of the possibility that there was another route, that you were considering using public land for profit to put up 150 families at considerable cost to the taxpayer, did you?

Mr. Cornell: I would like to answer this. I do not know what is exorbitant, but I know that in any of our projects in which there is a component of social housing of any kind, anyone might say it is exorbitant. It is very expensive, and that is what the whole program is. That is why we have also always tried to have a mixture in buildings, so we do not go back to the old style of many years ago, which they still have in many parts of the world, in which you put all low-income housing in one building.

Mr. Philip: Sir, in co-ops you do not put all the people in one building, and we have not been talking about the old type of projects.

Mr. Callahan: On a point of order, Mr. Chairman: Mr. Philip is asking questions and he does not give the witness an opportunity to answer. This is not an inquisition. We are not starting the fires burning to roast Mr. Cornell. I think Mr. Philip should let him answer.

Mr. Chairman: That is not a point of order. I think the witness has been through this exercise before--

Mr. Cornell: With Mr. Philip, many times.

Mr. Chairman: --and he is very capable of defending himself.

Mr. Philip: Mr. Cornell, are you aware of a document signed in 1977 by Mr. Epp and members of the Liberal caucus which stated that going the profit route or the rent supplement route, except in certain types of instances, which they spelled out, was fiscally irresponsible? Are you aware of that?

Mr. Cornell: No, I am not aware of that piece of paper.

Mr. Philip: It was an inquiry into the Ontario Housing Corp. and nonprofit housing. As deputy minister, I thought you might have been aware of that study. Does it not seem blatantly inconsistent that, working for a Liberal government as you are now, you are putting in a program that is directly contrary to Liberal caucus policy, at least as enunciated in 1977?

Mr. Cornell: We do not put any program in place unless it is government policy. We do not decide the policy; the government decides the policy.

Mr. Philip: What you are saying then is that the Liberals have done a flip-flop on their policy. Is that correct?

Mr. Cornell: I cannot say that; I will not say that.

Mr. Philip: Have done a change in their policy.

Mr. Cornell: I would say my minister believes this is a very good program, and it has worked very well since 1963.

Mr. Philip: If it were the intention of the government to get out of this project at the moment, what are the legal obligations, as you see them?

Mr. Cornell: I could not possibly answer that, because I do not believe they want to get out of the project. It came through the normal process; it was handled the right way. It is a very big project, an important one. I do not believe in any way they would do that, unless something has been said to my staff that I am unaware of.

Mr. Philip: Do any of the staff care to comment on that? Could you get out of this project at this point if you wished to?

Mr. Pitura: I suppose you can always get out of anything, if you are willing to suffer the consequences, whatever those may be, such as the project not going ahead.

Mr. Philip: Or the project going ahead under a different owner. Is that possible?

Mr. Pitura: Yes, as long as they met the criteria of the program.

Mr. Philip: Would it be possible in the next month or so for you to do a direct comparison of going this route versus the nonprofit route to see whether the statement on page 11 is factual or whether simply some speechwriter decided it would be good to fool the public by putting in a statement like this? Could you do a cost comparison?

Mr. Pitura: Yes, we will try to do a cost comparison. They are two different programs, but we will try to do it.

Mr. Cornell: We will be comparing apples and oranges, but we will try to do that and qualify that.

Mr. Philip: In doing that cost comparison, would you consult Lantana Non-Profit Homes, the Labour Council Development Foundation and some of the other nonprofit construction organizations to see exactly what price they could come in at?

Mr. Cornell: No, I will not agree to that, but we will certainly explore your original question.

Mr. Philip: You will not agree to consult anybody who might give you some figures that would contradict your statement on page 11.

Mr. Cornell: I would have to look at the case. I will explore the possibility, but I will not give a commitment that we will actually do it.

Mr. Philip: I find it quite irresponsible that you make a statement on page 11 without any facts, without any studies, without any figures, a statement that can only be judged as an attempt to mislead the committee and mislead the public, a statement that goes in direct contravention of much of the research that has been done in the field and in direct contravention of the justice committee report and study into Ontario housing and nonprofit housing. You make this statement without any kind of evidence, and I am just asking you, will you go back and come up with the evidence to support your statement?

Mr. Callahan: Could I have some clarification, Mr. Philip? What page 11 are you talking about?

Mr. Cornell: Page 11 of my original opening statement. Mr. Bissinger

has some rough cost figures that perhaps would be of interest to the members of the committee and he could read them into the record.

Mr. Bissinger: I believe I mentioned these at the last meeting. We did some comparisons for year one and it is quite easy to compare program costs for year one. Perhaps I could start with the nonprofit program.

In a 502-unit nonprofit project on that site, what we calculated was that the full recovery rent or average economic rent that would have to be charged for a project to break even would be about \$945 per unit per month. Under the social housing program, what we call the low end of market rent, for a project of that type it would be about \$662, which would result in a minimum of a \$283 per unit per month subsidy for every single unit of that project. That subsidy for year one would amount to about \$1.7 million. That would be just to write down the rent from the economic rent to the market rent, whether or not the individual tenant was a low-income household or a market household.

Mr. Philip: That really does not answer my question, though. If you go the nonprofit route, you are still going to have to subsidize the rent to the nonprofit groups, so that really does not give me a comparison.

Mr. Bissinger: My comparison goes beyond that, Mr. Philip.

Mr. Philip: Oh, I am sorry.

Mr. Bissinger: That is your first level of subsidy. In addition to that, for 25 or 40 per cent of the residents, whichever we want to use, that number of households would be what we call deep-subsidy recipients. These would be low-income types. They would receive an additional subsidy and that would be the difference between the \$662, which is the low end of market rent, and the tenant's portion, which would be approximately \$205, so there would be an additional \$457 per unit per month subsidy. For year one, the total assistance, based on 25 per cent of the units being rent-geared-to-income, would amount to \$2,390,000.

When we look at the convert-to-rent program for year one, if we look at the cost of the convert-to-rent loan--the interest that would be paid on the loan for year one plus a similar number of subsidized tenants--the individual rent-geared-to-income assistance would be slightly higher because this is a market rent program. The total year one cost for convert-to-rent would be \$1,111,000, about half of what it would be under a nonprofit project.

Mr. Philip: But in that comparison, you are not looking at the possibility of a nonprofit project on that site putting up that kind of building, are you?

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Mr. Bissinger: Yes, I am. These are not luxury accommodations; these are moderate-cost units.

Mr. Philip: Have you looked at it projected over 15 years?

Mr. Bissinger: As I mentioned the last time, once you get beyond year one, too many assumptions come into play and it becomes quite difficult to make a reasonable and realistic projection over 15 years.

Mr. Philip: Except that the inflation rate in a profit building is

more likely to be higher than in a nonprofit building; do you not agree?

Mr. Bissinger: In this case the city entered into a very extensive rental agreement with the proponents for 60 years which limits them to a 60-year rent control regardless of whether or not the provincial rent control legislation remains for 60 years.

Mr. Philip: But you know that even under rent control the average rent, using the rent review process, is going up at more than five per cent.

Mr. Bissinger: It can, yes.

Mr. Philip: It does. Do you agree that the research done in the United States shows that going the nonprofit route rather than the rent supplement route, particularly in large urban areas, is much cheaper?

Mr. Cornell: I believe I am correct in this; again, Mr. Pitura, you can correct me on this on the details. I think the American nonprofit concept in its operation and practice is different than ours. I think they are having extreme difficulties with it in some of the cities. I think Mr. Reville can testify from his visit to Chicago that it has not been--

Mr. Reville: Yes, I was in Chicago.

Mr. Chairman: Who did you have lunch with?

Mr. Reville: Mayor Daley and I discussed how to win elections.

Mr. Chairman: That would have been an interesting conversation with Mayor Daley.

Mr. Reville: We had an interesting phone hookup.

Mr. Philip: My contact in Chicago who taught me how to win elections was a fellow by the name of Saul Alinsky, which may show the difference in style between Mr. Reville and myself.

Mr. Reville: Also from Chicago, though.

Mr. Philip: I find it absolutely inconceivable that here we have public land being used for profit and after 15 years--is there anything that requires the 25 per cent of the units to remain as rent-supplemented units after 15 years?

Mr. Bissinger: No, there is not.

Mr. Philip: At the end of 15 years then, you have put in all this money, enough to buy three condominium town houses for each of these families, albeit not in downtown Toronto. You spend three times the amount you could actually buy them a home for, and at the end of 15 years, you have no equity, nothing to show for the taxpayer. The landlord can simply say: "Goodbye, Charlie. You were rent-supplemented for 15 years. Go out into the market and find your own accomodation."

Mr. Bissinger: Maybe I can respond to that. I should also mention that this applicant could have applied under another program called the Renterprise program, which provides interest-free loans as well to private developers for 15 years. In Toronto, there were 10 projects approved in 1986

for a total of 1,653 units, and under that program the average interest-free loan, which is similar to the convert-to-rent loan, was \$12,662 per unit.

Mr. Philip: Would he have had the same obligation of providing 25 per cent of the units?

Mr. Bissinger: There also would have been an obligation to provide rent-supplemented units. In fact, there it is up to 40 per cent.

Mr. Philip: But there would not necessarily have been a commitment by the government to take up all those units, would there?

Mr. Bissinger: If the units were required, there would have been a commitment.

Mr. Philip: What we have then is analagous to the person who is starving and goes out and buys caviar. That is essentially what you have done. You have 30,000 families on the waiting list. You are going to put them up at tremendous cost to the taxpayers while other people are out on the street. Frankly, I find that doing such a thing, without adequate studies and without asking the question of what happens after 15 years, is irresponsible.

Mr. Chairman: Would you like to respond to that?

Mr. Cornell: I think it should stand on the record that government can look at that observation, take it and consider it.

Mr. Pitura: Perhaps I can add that, first, these are loans, not grants, and are repaid; second, it was a market rental initiative, not a social housing initiative; third, it was an attempt to get rental stock available in the Toronto scene and in other parts of Ontario.

Mr. Callahan: If I understand Mr. Philip correctly, he was asking whether you had received any applications from any nonprofit groups to develop these lands. I gather you had not.

Mr. Bissinger: No, we had not.

Mr. Callahan: Had there been any indication that any other nonprofit groups were prepared to pick up that site and develop it?

Mr. Bissinger: No, there was not. The nonprofit groups were developing more than 500 units over on Bathurst Quay which was about a mile away.

Mr. Epp: Mr. Bissinger, do you see it as your function to go out and, so to speak, rattle somebody's chain and say, "Put in an application for a convert-to-rent or rent-geared-to income"?

Mr. Bissinger: That is not our function.

Mr. Epp: You have to deal with the applications that are before you on the basis of the guidelines that are provided and that have been there for some years' time. Is that not correct?

Mr. Bissinger: Yes, that is correct.

Mr. Epp: Do you feel that you have performed that function to the best of your ability?

Mr. Bissinger: Yes. I certainly do.

Mr. Epp: Mr. Bissinger, earlier you had some questions with regard to Mr. Fleischmann. You indicated at that time that you have never spoken to Mr. Fleischmann. Is that not correct?

Mr. Bissinger: No. I have spoken to Mr. Fleischmann.

Mr. Epp: I thought you said you had not received any calls from Mr. Fleischmann, but you met him at a meeting?

Mr. Bissinger: No, I met with Mr. Fleischmann once and I had about three brief telephone conversations with him.

Mr. Epp: For lawyers for various companies--of course, he is a lawyer and he was representing a company. Is that not correct?

Mr. Bissinger: Yes, he is.

Mr. Epp: Therefore, is this a unique experience for you to deal with representatives of companies whether they are lawyers or others?

Mr. Bissinger: No, it is not unique. I get many calls during the course of a week on behalf of applicants.

Mr. Epp: Lawyers, consultants or other people?

Mr. Bissinger: Yes.

Mr. Epp: You do not ask for their qualifications and ask them to send you a résumé on their qualifications and their political affiliations and so forth?

Mr. Bissinger: No, I do not.

Mr. Epp: Do you see it as your function to ask their political affiliation?

Mr. Bissinger: No, it is not.

Mr. Epp: The fact that he is a Liberal, Conservative or New Democrat does not concern you.

Mr. Bissinger: It does not enter into it at all.

Mr. Epp: You would not get excited about the fact that he is a Liberal in this case because you know there are a lot of Liberals in Ontario. There are more now than there were before June 26; right? Is it your function as a bureaucrat, and I do not say that in a negative context, to ask how much money the person is getting?

Mr. Bissinger: No, it is not.

Mr. Epp: When the person is getting more or less money, you do not ask him how much he is getting?

Mr. Bissinger: I have no idea what they are getting.

Mr. Epp: When Mr. Pope says he may be getting some more money than another lawyer representing another company, that is not your function?

Mr. Pope: I never said that.

Mr. Epp: Mr. Pope, you said not that much money or not so many funds or something of that nature, implying that he was getting more money maybe than somebody else.

Mr. Pope: I never said that.

Mr. Epp: This government has been in since June 26, 1985. Did you have representations made on behalf of other companies for convert-to-rent or rent-gearred-to income programs before June 26, 1985, for other projects?

Mr. Bissinger: I have been dealing with the convert-to-rent program since the outset, for the past four years. I have probably dealt with over 100 applications personally and in a supervisory capacity. This really is no different from most other projects in the way it was submitted to us and in the way we processed it.

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Mr. Epp: When you have a lawyer for a company call you such as Mr. Fleischmann in this case, a red light would not go up and you would say, "I cannot speak to him because he represents a company, because he is a lawyer and he represents a company or because he is an accountant"?

Mr. Bissinger: No, it could be a lawyer, an accountant, a real estate agent, a co-op resource group, a development consultant or any number of individuals representing a developer.

Mr. Epp: Therefore, when somebody called you, a red light would not go on right away and say, "I should not speak to him because I might appear before the standing committee on public accounts to account for all my phone calls, my dinners, my menus, my actions and my meetings."

Mr. Bissinger: No, we speak with everyone who inquires or wants to see us.

Mr. Epp: When somebody calls you, do you, for instance, get him to give you a long list of the items on his agenda? For instance, he calls and wants to speak about Huang and Danczkay. Do you then say, "Give me the 15 questions you are going to ask at the meeting so I can study the answers," or do you go to that meeting figuring he may ask a series of questions?

Mr. Bissinger: We do not ask for an agenda prior to the meeting.

Mr. Epp: So any kind of agenda items may come up regarding that project or maybe some other projects.

Mr. Bissinger: That is right.

Mr. Epp: That is no different now from what it was two, three, four or five years ago.

Mr. Bissinger: No, it is not.

Mr. Epp: Thank you very much.

Mr. Pope: You know as well as I do that Borden and Elliot are the lawyers for Huang and Danczkay, do you not?

Mr. Bissinger: Yes, we know that.

Mr. Pope: Mr. Fleischmann never identified himself as a solicitor for Huang and Danczkay on this project.

Mr. Epp: He is a lawyer.

Mr. Pope: He never identified himself as a solicitor acting on behalf of Huang and Danczkay because Morton Gross of Borden and Elliot was always the lawyer for Huang and Danczkay in their dealings with the government. Is that not true?

Mr. Bissinger: That is what the letterhead shows, Borden and Elliot, so that is how we know.

Mr. Epp: It is true that some of the larger firms have more than one lawyer. In fact, some individuals have more than one lawyer.

Mr. Pope: I will show Mr. Epp the letterhead of Borden and Elliot and if he can find Ivan Fleischmann on the letterhead, he is much better than I am.

Mr. Epp: No, they have more than one firm representing them sometimes.

Mr. Pope: Come on; what a bunch of nonsense.

I have a couple of more questions.

Mr. Philip: They have a lobby firm and they have a legal firm. That is what they have.

Mr. Pope: I do not believe this.

During the course of your decision-making on this project, at what times during the decision-making process did you receive calls from the minister's office?

Mr. Bissinger: I did not receive any calls from the minister's office.

Mr. Pope: Mr. Pitura?

Mr. Pitura: I do not recall receiving any calls from the minister's office.

Mr. Pope: Mr. Sparling?

Mr. Sparling: We never had any calls from the office. I called Mr. Goetz-Gadon and let him know when I had set up the session with Mr. Fleischmann and asked him if he wanted to attend as well. That is the only contact there was.

Mr. Pope: Can you explain to me--I will put the same question to the executive assistant whom we would like to have on as soon as possible--why the minister's summary of events that he filed with this committee is a sanitized version and there is no reference to a luncheon meeting with the executive assistant to the minister? There is no mention of all the phone calls you gentlemen were upfront enough to list in your documentation to us.

Mr. Cornell: I ask my staff to correct me if I am wrong, but in the master file that Mr. Bissinger was pulling together, I thought the understanding was that if there was a duplication we would just put the one thing in. Am I not correct?

Mr. Pope: Are you saying this is not everything from the minister's office?

Mr. Cornell: To the best of my knowledge, that is everything from the minister's office and anything else is already in your file. Am I correct on that?

Mr. Bissinger: That is correct.

Mr. Pope: What else is there from the minister's office that is already in our files? I am not talking about letters that you gentlemen dated February 3, 1987. I am talking about historical documents in the record. I am not talking about your reconstruction and the information you got by going back over your records. I am talking about what the minister has in his file from many months ago as a summary of events.

There is not one word of telephone calls from Ivan Fleischmann except for one reference on page 3 of the summary of events. There is nothing about the executive assistant's activities or the luncheon that took place at the Bellair Cafe on Cumberland. Does anyone have any explanation? It is not that you necessarily have to have one, because I will put the same question to the executive assistant.

Mr. Cornell: I think the request was for the files, Mr. Pope. I doubt if there would be anything in the files that said we had lunch or anything.

Mr. Pope: You do not have any explanation?

Mr. Cornell: In addition to the above, members of the committee asked for all relevant documents in the files of the office of the Ministry of Housing. We believe we have complied with that exactly.

Mr. Pope: You do not have any explanation for the fact that there is no appointment schedule for the minister or his executive assistant or any telephone conversations from the list of telephone calls that the executive assistant made or received with respect to this matter?

Mr. Cornell: There would be nothing on the file.

Mr. Pope: An executive assistant or minister would not keep notes of phone conversations or meetings?

Mr. Cornell: All I can say is that the deputy does not, but--

Mr. Pope: It is a new style of carrying on government then.

Mr. Callahan: They do it in Toronto too. If you look at Toronto, the logging of telephone calls is not practised. So if they do it in Toronto, which is a marvellous city--

Mr. Pope: You do not have to justify it. Do not worry, you will get your chance.

Mr. Callahan: It is there. I am drawing your attention to it.

Mr. Pope: That is my question, thank you.

Mr. Epp: Speaking about the logging of telephone calls, is it a practice to log all your telephone calls?

Mr. Cornell: It is not my practice to log them at all.

Mr. Epp: Is that something new?

Mr. Callahan: Only lawyers do that.

Mr. Cornell: If I got paid for them, I suppose I would.

Mr. Epp: Okay, thank you.

Ms. Fish: Would it be your practice or that of your staff to make a note or a memo to file as a result of a telephone call that might be germane to the subject under consideration?

Mr. Cornell: I believe that would be the practice that would be followed. I sometimes make a memo to file. I think I have maybe done it twice in five years. In that case, it was a staff personnel problem. I do not know whether it is the practice of other people.

Mr. Reville: Are you aware of what the per unit land cost was for that site?

Mr. Bissinger: It is a lease agreement and it could be anywhere between \$5,000 and \$10,000 per unit.

Mr. Reville: How long is the term of the lease? Harbourfront retains the ownership. Does it retain the fee and the land?

Mr. Bissinger: That is right. Everything reverts back to Harbourfront after 60 years.

Mr. Reville: After whose 60? Okay. Do you have an opinion of whether that is a high price to pay for that land?

Mr. Bissinger: They do not, as such, pay an upfront cost. I believe they pay a percentage of the net profit.

Mr. Reville: Is this a sweetheart deal for Harbourfront? Should I take that adjective out? Is this a good deal for Harbourfront?

Mr. Bissinger: I would not be able to comment on that.

Mr. Epp: He could not evaluate whether it is a good one for Harbourfront.

Mr. Reville: He knows the cost of the other pieces of land in that neighbourhood because there are programs that are funded partly by the provincial government under other kinds of housing delivery mechanisms that are going on there. The land cost is known, for instance, for the co-op projects and the Cityhome projects. One of the difficulties was that Harbourfront was trying to make a lot of dough on its land. Is that not so?

Mr. Bissinger: I really do not know about that.

Mr. Callahan: Just to go back, the city of Toronto, in its plan for Harbourfront, required that there be lower cost housing. Is that not correct? They required a mix. The fact that these people are looking out over the lake really has no bearing on it. That was part of the plan of the city of Toronto.

Mr. Cornell: We assume so, yes.

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Mr. Callahan: I gather they were desperately anxious simply to provide rental stock and I gather this project itself is viewed as a significant amount of rental stock that could be provided in Metropolitan Toronto.

Mr. Cornell: Yes.

Mr. Callahan: You indicated to us that the convert-to-rent program was originally started in Ottawa and Toronto and did not prove to be very successful. Is that right?

Mr. Cornell: That is correct.

Mr. Callahan: Up to the point when you received this application, how successful had it been?

Mr. Cornell: I would even say I still do not believe that, until this project, we had many units in the Toronto area.

Mr. Bissinger: Up until we received this application, there had been only 80 units committed in the city of Toronto, which means the program did not appear to hold much interest for developers.

Mr. Callahan: From my reading of it, the controversy started to occur at the council level when Alderman Martin, I guess, took exception to this project and fought against it.

Mr. Bissinger: It seems that way, yes.

Mr. Callahan: Can you recall any of the arguments that were advanced by Alderman Martin? Were they along the lines of what Mr. Philip is arguing, that you should not let people of moderate income look out over the lake?

Mr. Philip: On a point of order, Mr. Chairman: As usual, Mr. Callahan either has trouble understanding--

Mr. Callahan: I am not taking a supplementary, Mr. Chairman. Mr. Philip would not take one.

Mr. Chairman: This is a point of order. The question is related, for the record.

Mr. Philip: Mr. Callahan has his usual problem. I am not able to figure out exactly what it is--

Mr. Callahan: That is understandable, Mr. Philip.

Mr. Philip: --whether he is just a poor listener, a slow learner--

Mr. Callahan: Is that a slur on slow learners, Mr. Philip?

Mr. Philip: --or someone who simply likes to misrepresent the positions of other members.

Mr. Callahan: Is that a slur on slow learners? It sure sounds like it, Mr. Philip.

Mr. Philip: I at no time indicated that I was against poor people overlooking the lake. What I am against is poor people living in bus shelters while a few of them live, at very high cost to the taxpayers, in downtown Toronto when others could be accommodated.

Mr. Chairman: I think you have made your point.

Mr. Gillies: On a point of order, Mr. Chairman: In fairness to Alderman Martin, who is not here, I think if Mr. Callahan checks the record, it is clearly documented that Alderman Martin's concerns were the record of illegal construction, breaches of the building code, the building permits, and all the other problems that expand on this list, which I would be pleased to give to Mr. Callahan. But for him to suggest that Alderman Martin's concerns, with the troubled history of this project, were in any way facetious, I think is very unfair.

Mr. Callahan: I do not know what his concerns were. I was asking the question.

Mr. Philip: There is not an awful lot that you do know.

Mr. Reville: It is fair to say, and I think Mr. Callahan is right in that there is a concern about the problems poor or moderate-income people will have living in an area that does not have much infrastructure. Those issues were indeed raised and are of concern. Of course, that is not a point of order at all, but why not get in on the fun?

Mr. Callahan: I notice Mr. Philip does not put you down for that.

Interjection: He would not dare.

Mr. Philip: Once again, he has not been listening.

Mr. Chairman: Order. Let us on with this, Mr. Callahan.

Mr. Callahan: To go back to the other applications that you had before and the ones you have had since, in terms of meetings with people and discussions with people, has there been anything in those that is any different from the procedure you followed in this instance?

Mr. Bissinger: Not at the regional level. We dealt with this in exactly the same way as all the other 800-odd convert-to-rent proposals we have received, this one more extensively, because it was somewhat more

complicated, but we did not deviate from our review process. It was subjected to all the scrutiny that a project of this type is subjected to.

I do want to say that at no time did the regional office ever receive any direction from senior staff or from the minister's office.

Mr. Epp: May I have a supplementary on that? You did not receive any direction or anything and you recommended the project. Is that not correct?

Mr. Bissinger: Yes. It was strictly a branch office recommendation, which was accepted.

Mr. Epp: So that is absolutely clear. The recommendation was made based on the merits of the program, and that is what you do in all your projects.

Mr. Bissinger: Yes.

Mr. Chairman: Are there further questions of our witnesses? Nothing? Thank you, gentlemen.

I am not sure whether we want to talk about where we go with this matter at this stage.

Interjection.

Mr. Chairman: No, we have a couple of items before anyone leaves. Obviously, it does not look like we are going to be able to deal with this in terms of hearings again until the House is back in session.

Mr. Pope: Have the letters gone pursuant to the motion that we have adopted?

Clerk of the Committee: No.

Mr. Gillies: We are most anxious to get on with this. I appreciate there was difficulty in getting any more time during the break, but could I suggest that all the witnesses we have indicated we would like to have appear--

Mr. Chairman: Excuse me. Could I encourage the conversations to take place outside the room, please?

Mr. Gillies: I wonder whether we could get those letters out and schedule further hearings on this matter as soon as possible when the House resumes. We certainly want to hear the testimony of the other witnesses, and it would be a great pity if the committee does not complete its consideration of this matter before we move on to other things, come the April session.

Mr. Philip: We have Graham Software. That has to be dealt with.

Mr. Gillies: That is during the break; I am not talking about the break. We have scheduled our week for the break, and I do not think we want to change that. I am saying that when we do resume in April, we should get right back at this, because there is testimony on the record now on this matter which has to be either corroborated or disputed, which it will be by the other witnesses. I just do not think we can let this drop, having half the story.

Mr. Chairman: All right. I have one matter before we depart.

Mr. Philip: I assume Patrick will be going through the Hansard during the break, going over the testimony and seeing where there may or may not be some conflicts in testimony. Some of us are on an awful lot of committees.

Mr. Chairman: I think it is safe to assume that.

IDEA CORP.

Mr. Chairman: A copy of a motion is being circulated to all members. It is based on a request from the Provincial Auditor in respect to the Graham Software matter. Perhaps one of you would like to move it, as soon as you get it and take a look at it. I am sure you will be supportive. Is someone prepared to move the motion?

Mr. Epp moves that the Office of the Provincial Auditor be requested to review on behalf of the committee all financial and related documents in the possession of and at the offices of Terry Graham, Graham Software, and their counsel, as those documents relate to the committee's review of the IDEA/Ontario Development Corp. investment in Graham Software; and further, that the Provincial Auditor be requested to select for duplication any documents considered pertinent to the committee's concerns and to report to the committee on his review.

Motion agreed to.

Mr. Chairman: On one other item, we asked Patrick Malcolmson to take a look at the subject of venture capital. If you recall, the Ontario Development Corp. suggested that, prior to getting into the Graham Software hearings, we have a witness, an expert in venture capital, appear before us. The committee was reluctant to do that.

At the committee's request, Patrick has looked into this matter and is recommending that we again consider bringing in a venture capital expert to appear before the committee for a set period, perhaps an hour, just to review with the committee what is good venture capital investment.

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Mr. Mancini: Is this a request from the ODC?

Mr. Chairman: Yes, and Mr. Malcolmson is supporting that request after taking a look at it on behalf of the committee.

Mr. Philip: Are we doing it after we are finished with Graham Software?

Mr. Mancini: We let Mr. Graham and his lawyer come in and appear before the committee for all the time they wanted one morning.

Mr. Pope: ODC was in before.

Mr. Mancini: Yes, but not about exactly the same thing. These people came in in confidence and told us everything they wanted to tell us. Are you now going to say to the committee it cannot hear from somebody else?

Mr. Pope: I am not saying that at all.

Mr. Mancini: They deserve the same treatment as Graham.

Mr. Pope: They will get it after we get at Graham Software.

Mr. Chairman: If members are in agreement, I would like Mr. Malcolmson to make some comments on this. He has taken a look at this issue on our behalf.

Mr. Malcolmson: The rationale behind it is that a good part of the disagreement between ODC and Graham Software is going to be over what is a good investment and what venture capital should be doing. Mr. MacKinnon's concern is that if the committee does not have some objective criteria to judge this matter on, it is going to be Mr. MacKinnon's word against Mr. Graham's word. That is the problem.

Mr. Pope: Can I comment on that? There is no disagreement any more between ODC and Graham Software. They just settled a deal. We now have an investigation of a loss of \$4.7 million.

Mr. Chairman: I guess there is no problem with having the venture capital expert in after Graham in terms of the timing of the thing.

Mr. Epp: I think it is an excellent idea. I would never want to be accused of making our minds up before we hear all the facts. We want to hear all the facts, so let us get the expert in.

Mr. Chairman: Okay. We will undertake to line someone up.

Mr. Gillies: I just want to register a concern. I do not know if other members of the committee feel the same way I do, but some number of weeks ago, ODC came before us in camera to put forward its views on what was happening with the Graham Software matter and to ask for some time before the committee started its review of that matter. We acceded to that request. Since then, we had Mr. Graham and Mr. Wigdor come in and put some thoughts forward from their point of view on this matter.

My concern is this. If the morning press releases are correct, an out-of-court agreement was reached between Graham Software and ODC on this matter, on or about February 5. As ODC was so darned concerned that it came in here to ask us to co-operate with it in completing its legal matters, I want to know if between the time this matter was settled and the present, ODC, anybody from the Ministry of Industry, Trade and Technology or anybody from Mr. O'Neil's office contacted you, Mr. Chairman, or the clerk of the committee to inform us what was going on. I suspect that is not the case.

Mr. Callahan: I may be mistaken but, in fairness to the minister, I thought he said in the House yesterday that he had not had an opportunity to do that.

Mr. Pope: No, that was on Wyda.

Mr. Chairman: Before this goes any further, I am advised as of this moment that ODC has been in contact with the clerk and has been prepared to appear. Perhaps Mr. Arnott wants to comment before we take it any further.

Clerk of the Committee: Each week, as the convert-to-rent program review has been extended, I have phoned Mr. MacKinnon's office to say that once again we are postponing the date on which we commence the Graham Software review. On one occasion, he did indicate to me that a settlement was close and, I believe after that, he indicated that the settlement had been reached. I informed the chairman.

Mr. Gillies: That abates my concern somewhat, but I still say that was a call initiated by the clerk. He was phoning ODC to inform them of our schedule and they happened to inform him of their progress.

Mr. Mancini: Would it have made more sense for them to hang up and call back 30 seconds later?

Mr. Gillies: No. Do not be facetious.

Mr. Mancini: You are the one who is being facetious. They were on the phone and they were exchanging information. My word.

Mr. Pope: They never once initiated anything in this thing.

Mr. Gillies: Mr. Chairman, I insist on replying to this.

Mr. Chairman: Direct your comments to the chair and not across the table.

Mr. Gillies: The point is this. The clerk of this committee calls ODC on a scheduling matter, and by the by, it tells our clerk what is going on. I say that when an agency of this government comes stomping in here to ask for our co-operation on a matter, which we grant, it should have come before this committee or the steering committee to tell us exactly what was going on and when it was going on.

Mr. Mancini: They told the clerk.

Mr. Gillies: O'Neil does not make a statement in the House--and we are going to be raising that this afternoon--his officials do not contact us and ODC does not contact us. I think it is completely out of line.

Mr. Chairman: Let us have some order here. Mr. Epp, do you want to make some comments?

Mr. Epp: The clerk was told, and then, I assume, the clerk told you. If you had seen anything irregular about that, you should have got back to the clerk or the committee. Is it not for us to assume that?

Mr. Chairman: I am not sure whether that is fair. I am trying to recall, in terms of my memory. I recall that when Wigdor and Graham were before the subcommittee, the clerk advised me there was an agreement in the offing. I think Doug did advise me a settlement had been agreed on, but I do not think he had any details on that settlement at all, simply that an agreement had been reached.

Mr. Callahan: Maybe dates were of some significance here. Mr. Arnott was told that a settlement was close. One expects they certainly would not have come before us at that point, because that would have been a matter of trying to settle. Once the settlement was effected, which I understand was February 5, last Thursday--I do not know what time that settlement was effected--the first time they could have come before us would have been today. In fairness to them, we are right on to the Thursday and we now have that information.

Mr. Gillies: My point is simply this: To date, ODC has not contacted us and asked to come before us to explain the settlement it reached on a matter about which it came to us. It asked for our co-operation in delaying

the proceedings of this committee so it could effect the settlement. To this moment, they have not done so. Is that correct?

Mr. Mancini: That is not correct.

Mr. Gillies: Further, there has been no statement.

Mr. Mancini: That is not correct.

Mr. Gillies: No, that is correct. I ask the clerk and the chairman, did ODC contact either of you and say, "We would like to come before this committee and tell you of the settlement we have arrived at"?

Mr. Chairman: There has been a question directed to the chair. Certainly they have not contacted me.

Mr. Gillies: Then it is correct.

Mr. Chairman: Perhaps the clerk would like to respond.

Clerk of the Committee: I have been in touch with Mr. MacKinnon's office. Mr. MacKinnon has also initiated phone calls to me. My understanding is that ODC has been awaiting our setting the date to commence the review, that the date has been postponed several weeks and that ODC has, at all times, been prepared to come in as soon as called.

Mr. Pope: I do not know what that means. Did they tell you they had the details of a settlement they were prepared to bring to this committee or not?

Mr. Gillies: The answer to that, as I see it, is no. I take severe exception to the members of this committee having to learn some selective details of this settlement in the morning papers. I wish that concern to be passed along to Mr. MacKinnon.

Mr. Epp: I think, to be fair, Mr. Gillies, you have changed the emphasis of your remarks. Originally--

Interjection.

Mr. Epp: No, come on. We are in camera, so you do not have to worry about the media.

Ms. Fish: No. We are not in camera; we are on camera.

Mr. Epp: It does not matter.

Ms. Fish: No walls, no barriers.

Mr. Epp: It does not matter anyway. The fact is they spoke to the clerk and the clerk told them what was going on. They let the clerk know, first, that a settlement was close and, second, that they had arrived at a settlement. If you want to have a special meeting for them to bring down the details before this committee, then we can invite them back some time.

Mr. Pope: Where the hell is the minister?

Mr. Callahan: Can I have some clarification, please, from Mr. Gillies? I have not read that press item yet this morning. I read the Globe and Mail. I gather it was not in the Globe.

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Mr. Pope: Yes, it was on the front page of the Globe.

Ms. Fish: It was a little hard to miss.

Mr. Davis: You have to get past the comics.

Mr. Callahan: In any event, was that reported as having been completed today? Mr. Arnott was told there was a settlement effected. The settlement would not be finally effected until minutes of settlement were signed by those people authorized by both sides. That is what I would like to find out, to clarify the issue. Perhaps we can find out when the actual execution of the minutes of settlement, and therefore the implementation of the settlement, was effected. I cannot believe that if a settlement had been arrived at on February 5, Lorrie Goldstein at least would not have had the settlement on the front page or page 3 or page 4 of the Toronto Sun last week. I have to conclude that the matter was probably finalized yesterday or today. That certainly would not give us much opportunity to see it.

TECHNOLOGY FUND
(continued)

Mr. Philip: Since this is the last meeting before the break, I am concerned that the Premier (Mr. Peterson) seems to be covering up the whole matter of Exploracom. I moved a motion in this committee asking for the tabling of documents related to Exploracom. There is no court case at the moment. Mr. Chairman, have you received, through the clerk, the documents we requested? If not, are you prepared to ask for a Speaker's warrant to obtain those documents?

Mr. Chairman: I just sent the letter to the Premier yesterday. Obviously, he has not had time to respond.

Dealing with the other subject, so that members are aware, Mr. Malcolmson was talking to Ontario Development Corp. on Tuesday. He initiated the call in reference to the venture capital matter. He made the inquiry about the settlement, if a settlement had indeed been reached, and ODC advised him that one had been and that it would provide him with all the materials and information necessary on that as soon as possible.

Mr. Philip: What is your intent if, within two weeks, you do not receive the documents requested by this committee from Exploracom?

Mr. Callahan: That is hypothetical.

Mr. Philip: We are dealing with a very real issue. The Premier has refused to answer questions in the House. His testimony is indirect.

Mr. Chairman: If indeed we have a lack of response from the Premier's office, I think the subcommittee can get together. If we deem it necessary, we can call an emergency meeting of the committee. We have dealt with this type of thing in the past and have been able to handle it. I do not think we should be assuming we are not going to get an adequate response. If that occurs, I am sure we can handle it expeditiously at that point.

Mr. Philip: In the event you do have the documents tabled, will you be contacting each of the caucuses so that we may examine those documents at the same time, or perhaps calling a one-day meeting of the committee at least to look at those documents? It could be done on a Friday, when the House is not in session.

Mr. Chairman: We will certainly make members aware of the receipt of the documents and their availability. We will take a look at the need for a committee meeting. I think members can assess that after they have had an opportunity to take a look at the documents.

Mr. Callahan: May I go back to one thing? I recognize that this will probably be guffawed at by the opposition, but I have to say this. As a practising solicitor, Mr. Pope will know this. If these documents--and I am making no determination whether they were documents prepared in anticipation of possible litigation--are privileged, and if they are turned over voluntarily, it may well be that will be a waiver of privilege. What may happen is that if those documents prove to be damaging in terms of the province's interest in a lawsuit, we will have assisted, aided and abetted the damages to be suffered by the taxpayers of the province. That may sound partisan, but I say that in a totally nonpartisan way.

Mr. Chairman: I am sure that the Premier's office is prepared to express those concerns and that we as a committee are prepared to deal with those matters in camera if necessary.

Mr. Callahan: As long as that is the way it is dealt with, because I think we all have one common interest, quite apart from our political sides, which is to see that the taxpayers are served well and not unnecessarily hurt as a result of partisan reasons.

Mr. Philip: With great respect, it was not this committee that promised somebody \$17.5 million.

Mr. Chairman: Let us not let this deteriorate. Mr. Pope, do you want to say something before we adjourn?

Mr. Pope: I have a process question. Is there some problem about getting letters out that I am not aware of?

Mr. Chairman: I think there was a concern about the timing in terms of appearance of witnesses. Was that the reason for the delay?

Clerk of the Committee: In terms of the witnesses on the convert-to-rent program, I had no direction from the committee as to when to schedule them. I do now.

Mr. Pope: Will the letters be signed by you? How are we going to get the letters out now? Does Doug sign them?

Mr. Chairman: He can sign them on my behalf.

Mr. Pope: Will they be out this week or Monday or Tuesday?

Clerk of the Committee: Sure.

The committee adjourned at 11:56 a.m.



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